



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 28] नई दिल्ली, शनिवार, जुलाई 9, 1994/आषाढ़ 18, 1916
No. 28] NEW DELHI, SATURDAY, JULY 9, 1994/ASADHA 18, 1916

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii) PART II—Section 3—Sub-Section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than
the Ministry of Defence)

वित्त मंत्रालय
(आर्थिक कार्य विभाग)
(बैंकिंग प्रभाग)
नई दिल्ली 6 जून, 1994

cial institution known as "Securities Trading Corporation of
India Limited" being a company registered under the Com-
panies Act, 1956 (1 of 1956) for purposes of the said clause.

[No. 15/2/94-BOA]
B. L. SACHDEVA, Under Secy.

भा. आ. 1551—भारतीय रिजर्व बैंक अधिनियम, 1934 (1934
का 2) की धारा 17 के खण्ड (4खख) द्वारा प्रदत्त शक्तियों का प्रयोग
करते हुए, केन्द्रीय सरकार, कम्पनी अधिनियम, 1956 (1956 का 1)
के तहत कंपनी के रूप में वर्त "भारतीय सिक्केरिटी ट्रेडिंग कॉर्पोरेशन
लिमिटेड" नामक वित्तीय संस्थान को उक्त खण्ड के प्रयोजनार्थ अधिसूचित
करती है।

[संख्या 15/2/94—बी ओ ए]
बी. एल. सचदेव, अध्वर सचिव

MINISTRY OF FINANCE
(Department of Economic Affairs)
(Banking Division)
New Delhi, the 6th June, 1994

S.O. 1551.—In exercise of the powers conferred by clause
(4BB) of Section 17 of the Reserve Bank of India Act, 1934
(2 of 1934), the Central Government hereby notifies the finan-

खाद्य प्रसंस्करण उद्योग मंत्रालय

आदेश

नई दिल्ली, 20 जून, 1994

एग.ओ. 1552:—फल उत्पाद आदेश, 1955 के खण्ड (3) के
उपखण्ड (1) के अनुसरण में, केन्द्र सरकार, एन.डी.आर. इस आदेश के
सरकारी गजट में प्रकाशन की तारीख से दो वर्ष की अवधि के लिए,
केन्द्रीय फल उत्पाद सलाहकार समिति का गठन करती है जिसमें निम्न-
लिखित सदस्य होंगे, अर्थात्:—

1. सी. के. बसु, अध्यक्ष
संयुक्त सचिव,
भारत सरकार
खाद्य प्रसंस्करण उद्योग मंत्रालय
नई दिल्ली-110049
2. कार्यकारी निदेशक,
(खाद्य तथा पोषाहार डेप्ट.)
खाद्य विभाग, भारत सरकार, उपाध्यक्ष

- | | | | |
|---|--|---|---|
| 3. श्री विमल ठक्कर,
मै. अमेरिकन ड्राई फ्रूट्स
अव्मा औद्योगिक एस्टेट,
दूसरा तल, सेवरी ईस्ट,
बम्बई-400015 | संश्लिष्ट मिरप, मिरका,
मुरब्बा, चटनी और अचार
निर्माताओं के प्रतिनिधि | 14. तकनीकी सलाहकार,
खाद्य एवं पोषाहार,
मानव संसाधन विकास, कृषि भवन,
नई दिल्ली-110001 | |
| 4. श्री गोपाल शर्मा,
उपाध्यक्ष,
मै. गोदरेस फूड लि.,
ई-7/697, शाहपुरा,
अरेरा कालोनी, भोपाल,
मध्य प्रदेश-462016 | स्वस्थ और तैयार पेय
निर्माताओं के प्रतिनिधि | 15. श्री विमल कान्ति धर,
आर.के. मिशन रोड,
सिल्वर, असम | भारत में फल और सब्जी
उत्पादकों के प्रतिनिधि |
| 5. श्री एम. पारिख
मै. ब्रुक बाण्ड लिपटन इंडिया लि.,
बंगलौर-मद्रास रोड,
बंगलौर-560016 | | 16. फल और सब्जी उत्पादक
द्वारा
कार्यकारी निदेशक,
राष्ट्रीय बागवानी बोर्ड, गुडगांव,
हरियाणा | भारत में फल और सब्जी
उत्पादकों के प्रतिनिधि |
| 6. श्री अशोक पाटिल,
प्रबंध निदेशक,
मै. वेस्टर्न फ्रूट्स एण्ड वेजीटेबल्स लि.,
31-घूत सेन्टर, स्टेशन रोड,
पो. बै. क्रमांक 120,
अहमद नगर-414001 | डिब्बाबन्द खाद्यों और
सब्जियों, जैमों, जेलियों,
मुरब्बों और टमाटर के
उत्पाद निर्माताओं के प्रति-
निधि। | 17. बी.के. तिवारी,
सहायक महानिदेशक,
(पी.एफ.ए.)
स्वास्थ्य मंत्रालय,
निर्माण भवन, नई दिल्ली-110001 | स्वास्थ्य और परिवार
कल्याण मंत्रालय के प्रतिनिधि |
| 7. श्री एस.एन. मित्र,
प्रोप्राइटर,
मै. मिडा एंड कं.,
कून नगर,
(हिन्द मोटर्स के समीप)
पश्चिम बंगाल-700001 | मुरब्बा, चटनी और अचार
के छोटे निर्माताओं के
प्रतिनिधि | 18. श्री पी.एम. सिन्हा,
प्रबंध निदेशक,
पेप्सी फूड्स,
मोहन देव बिल्डिंग,
3, टालस्टाय मार्ग, नई दिल्ली-110001 | फल रस या फल गूदा सहित
या इसके बिना मीठे खाति
नल निर्माताओं के प्रतिनिधि |
| 8. श्री एन. भार्गव,
मिडलैंड फ्रूट्स एंड वेजीटेबल प्रोडक्स,
इंडिया प्रा. लि., जम्बू हाउस,
नई दिल्ली-110020 | डिब्बाबन्द फलों और
सब्जियों, जैमों जेलियों और
मुरब्बों के छोटे निर्माताओं
के प्रतिनिधि | 19. श्री पंडोले,
प्रबंध निदेशक,
मै. ड्यूकस एंड कं.,
चेम्बूर, बम्बई-400088 | |
| 9. श्री आर.एल. चोपड़ा,
मै. केजरीबाग इंटरप्राइजेज,
312, वर्ल्ड ट्रेड सेन्टर,
वाराणसी लेन, नई दिल्ली-110001. | तकनीकी विशेषज्ञ | 20. श्री आर.एन. शर्मा,
निदेशक,
कृषि और खाद्य प्रभाग,
भारतीय मानक संस्था,
मानक भवन, नई दिल्ली-110001 | भारतीय मानक संस्था के
नामित |
| 10. श्री एच.सी. लाल,
उपाध्यक्ष, आल
इंडिया फूड प्रेजर्वर्स एसोसिएशन,
206 सरविन्दो प्लेस, हाऊ खाल,
नई दिल्ली-110016 | तकनीकी विशेषज्ञ | 21. निदेशक (फल एवं सब्जों परिरक्षण)
खाद्य प्रसंस्करण उद्योग मंत्रालय,
पंचशील भवन, नई दिल्ली-49 | [फा. नं. 22-3/93-एफ एंड बीपी]
एम.के.जे. नायर, धवर सचिव |
| 11. श्री शिव जाटिया,
प्रबंध निदेशक,
मै. विस्को लि.,
बलाई एस्टेट,
बम्बई-400038 | फल एवं सब्जी उत्पाद
निर्यातकों के प्रतिनिधि | | |
| 12. निदेशक,
केन्द्रीय खाद्य प्रौद्योगिकी,
अनुसंधान संस्थान,
बी.बी. मोहल्ला,
मैसूर-570013
कनाटक | | | |
| 13. कृषि कमिश्नर
भारत सरकार,
कृषि मंत्रालय,
कृषि भवन,
नई दिल्ली-110001 | | | |

MINISTRY OF FOOD PROCESSING INDUSTRIES

ORDER

New Delhi, the 20th June, 1994

S.O. 1552.—In pursuance of sub-clause (1) of clause 3 of the Fruit Products Order, 1955, the Central Government hereby constitute for a period of two years from the date of publication of this Order in the Official Gazette, the Central Fruit Products Advisory Committee consisting of the following members, namely:—

- | | |
|---|---------------|
| 1. C.K. Basu,
Joint Secretary,
Government of India,
Ministry of Food Process-
ing Industries,
New Delhi-110001 | Chairman |
| 2. Executive Director,
(Food and Nutrition
Board),
Department of Food,
Government of India | Vice-Chairman |

- | | | | |
|--|---|---|---|
| 3. Shri Bimal Thakkar
M/s. American Dry Fruits
Acma Industrial Estate,
2nd Floor,
Sewri East,
Bombay-400015 | Representing Synthetic
Syrup, Vinegar, Murabba,
Chutney and Pickle manu-
facturers. | 12. Director,
Central Food Technolo-
gical Research Institute
V.V. Mohalla,
Mysore-570013
Karnataka | |
| 4. Shri Gopal Sharma
Vice President,
M/s. Godrej Food Ltd.,
E-7/697, Shahpura,
Aera Colony,
Bhopal,
Madhya Pradesh-462016 | Representing Squash and
ready to serve beverage
manufacturers. | 13. Agriculture Commissioner
Government of India
Ministry of Agriculture,
Krishi Bhavan,
New Delhi-110001 | |
| 5. Shri M. Parikh,
M/s. Broke Bond Lipton
India Ltd.,
Bangalore-Madras Road,
Bangalore-560016 | Representing the manufac-
turers of canned foods and
vegetables, jams, jellies,
marmalades and tomato
products. | 14. Technical Advisor,
Food and Nutrition,
Human Resource Develop-
ment
Krishi Bhavan,
New Delhi-110001 | |
| 6. Shri. Ashok Patil,
Managing Director
M/s. Western Fruits and
Vegetables Ltd.,
310, Dhoot Centre,
Station Road,
P.B. No. 120,
Ahmednagar-414001 | | 15. Shri Bimal Khanti Dhar
R.K. Mission Road,
Silichar,
Assam. | Representing Fruits and
Vegetable Growers in
India |
| 7. Shri S.N. Mitra,
Proprietor,
M/s Midha & Co.,
Koon Nagar,
(Near Hind Motors)
West Bengal-700001. | Representing Small Scale
Manufacturers of Mura-
bba, Chutney and Pickles | 16. Fruit and Vegetable
grower through
Executive Director,
National Horticulture
Board,
Gurgaon,
Haryana. | Representing Fruits and
Vegetable Growers in
India |
| 8. Shri N. Bhargava
Midland Fruits and
Vegetable Products
(I) Pvt. Ltd.
Jambo House,
New Delhi-110020 | Representing Small Scale
Manufacturers of canned
fruits and vegetables,
jams, jellies and mar-
malies. | 17. B.K. Tiwari
Asstt. Director General
(P.F.A.),
Ministry of Health
Nirman Bhavan,
New Delhi-110001 | Representative of Minis-
try of Health and Family
Welfare |
| 9. Shri R.L. Chopra,
M/s. Kejriwal Enterprises
312, World Trade Centre,
Barakhamba Lane,
New Delhi-110001 | Technical Expert | 18. Shri P.M. Sinha
Managing Director
Pepsi Foods
Mohan Dev Building
3, Tolstoy Marg,
New Delhi-110001 | Representing the manu-
facturers of Sweetened
acerated waters with or
out fruit juice or |
| 10. Shri H.C. Lal,
Vice President,
Ail India Food Preservers
Association,
206, Aurbindo Place,
Hauz Khas,
New Delhi-1100016 | Technical Expert | 19. Shri Pandole,
Managing Director
M/s. Dukes & Co.
Chembur,
Bombay-400033 | |
| 11. Shri Shiv Jatia,
Managing Director
M/s. WIMCO Ltd.,
Ballard Estate,
Bombay-400038. | Representing exporters of
fruits and Vegetable
products. | 20. Shri R.N. Sharma
Director,
Agriculture and Food
Division,
Bureau of Indian
Standards,
Manak Bhavan,
New Delhi-110001 | Nominee of Bureau of
Indian Standards |
| | | 21. Director,
(Fruit and Vegetable
Preservation)
Ministry of Food
Processing Industries
Panchsheel Bhavan,
New Delhi-110049 | Member Secretary |

कोयला मंत्रालय

नई दिल्ली, 7 जून, 1994

का.आ.1553 :—केन्द्रीय सरकार को यह प्रतीत होता है कि इससे उपायय अनुसूची में उल्लिखित भूमि में कोयला अभिप्राप्त किए जाने की संभावना है;

अतः, अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए, उस क्षेत्र में कोयले का पूर्वेक्षण करने के अपने आणय की सूचना देती है ;

इस अधिसूचना के अंतर्गत आने वाले क्षेत्र के रेखांक सं. एम/86, तारीख 2 अप्रैल, 1993 का निरीक्षण कलक्टर, बर्दवान (पश्चिमी बंगाल) के कार्यालय में या कोयला नियंत्रक, 1, कांजामन हाउस स्ट्रीट, कलकत्ता के कार्यालय में या निदेशक (तकनीकी), ईस्टर्न कोलफील्ड्स सैक्टोरिया डाकघर—दिनेरगढ़, जिला बर्दवान (पश्चिमी बंगाल) के कार्यालय में किया जा सकता है।

इस अधिसूचना के अंतर्गत आने वाली भूमि में हितवद्ध कोई व्यक्ति उक्त अधिनियम की धारा 13 की उपधारा (7) में निर्दिष्ट सभी नक्शों, चार्ट और अन्य दस्तावेजों, इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन के भीतर, भारसाधक अधिकारी/विभागाध्यक्ष (राजस्व) ईस्टर्न कोलफील्ड्स लि. सैक्टोरिया, डाकघर—दिनेरगढ़, जिला-बर्दवान (पश्चिमी बंगाल) को भेजेगा।

अनुसूची

रानीगंज कोयला क्षेत्र

(रेखांक सं. एम/86, तारीख 2 अप्रैल, 1993)

क्रम संख्यांक	मौजा	अधिकारिता सूची संख्यांक	पुलिस थाना	जिला	क्षेत्र एकड़ में	टिप्पणियाँ
1.	माधईपुर	4	फरीदपुर	बर्दवान	17.00	भाग
2.	भाबूरिया	7	फरीदपुर	बर्दवान	10.50	भाग
3.	देवीपुर	127	डुबराजपुर	बर्दवान	16.00	भाग
4.	पलासडंगा	154	डुबराजपुर	बर्दवान	4.50	भाग
					कुल :	48.00 एकड़ (लगभग)
					या	19.43 हेक्टर (लगभग)

सीमा वर्णन :

- क-ख-ग रेखा बिन्दु "क" से आरंभ होती है और जिला बर्दवान (मौजा भाबूरिया और माधईपुर) पर अड़नोई नदी के दक्षिणी किनारे से होकर जाती है और बिन्दु "ग" पर मिलती है।
- ग-घ रेखा अड़नोई नदी को पार करती हुई जाती है और जिला बोग्रूम के मौजा देवीपुर में बिन्दु "घ" पर मिलती है।
- घ-ङ-च-छ रेखा जिला बीरभूम के मौजा देवीपुर और पलासडंगा से होकर जाती है और जिला बर्दवान के मौजा भाबूरिया में बिन्दु "छ" पर मिलती है।
- छ-ज रेखा अड़नोई नदी को पार करती हुई बिन्दु "छ" से जाती है और आरंभिक बिन्दु "क" पर मिलती है।

MINISTRY OF COAL

New Delhi, the 7th June, 1994

S.O.1553:—Whereas it appears to the Central Government that coal is likely to be obtained from the lands mentioned in the Schedule hereto annexed;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the Central Government hereby gives notice of its intention to prospect for coal therein.

The plan bearing No. M/86 dated the 2nd April, 1993 of the area covered by this notification can be inspected in the office of the Collector, Burdwan (West Bengal), or in the office of the Coal Controller, 1, Council House Street, Calcutta, or in the office of the Director (Technical), Eastern Coalfields Limited, Sanctoria, P.O. Dishergarh, District Burdwan (West Bengal).

Any person interested in the lands covered by this notification shall deliver all maps, charts and other documents referred to in sub-section (7) of section 13 of the said Act to the Officer-in-Charge/Head of the Department (Revenue), Eastern Coalfields Limited, Sanctoria, P.O. Dishergarh, Burdwan within ninety days from the date of the publication of this notification in the Gazette of India.

SCHEDULE

RANIGANJ COALFIELDS

(Plan No. M/86 Dated 2nd April, 1993)

Serial number	Mouza	Jurisdiction list number	Police Station	District	Area in acres	Remarks
1.	Madhaipur	4	Faridpur	Burdwan	17.00	Part
2.	Bhaburia	7	Faridpur	Burdwan	10.50	Part
3.	Debipur	127	Dubrajpur	Birbhum	16.00	Part
4.	Palasdanga	154	Dubrajpur	Birbhum	4.50	Part
Total					48.00 acres	
					(approximately)	
or					19.43 hectares	
					(approximately)	

Boundary description :

- A—B—C Line starts from point 'A' and passes through southern bank of Adjoy river at District Burdwan (Bhaburia and Madhaipur Mouza) and meets at point 'C'.
- C—D Line passes across the Adjoy river and meets at point 'D' at Mouza Debipur of District Birbhum.
- D—E—F—G Line passes through Mouza Debipur and Palasdanga of District Birbhum and meets at point 'G' at Bhaburia Mouza of District Burdwan.
- G—A Line passes across the Adjoy river from point 'G' and meets at starting point 'A'.

[No. 43015/12/93—LSW]
VINAY VASISHTHA, Director.

शुद्धि-पत्र

नई दिल्ली, 7 जून, 1994

का. आ. 1554.—भारत के राजपत्र, दिनांक 4 दिसम्बर, 1993 के भाग-II, खंड 3, उपखंड (ii) में पृष्ठ क्रमांक 3682 से 3683 पर प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिवचना का.आ. 2587 दिनांक 10 नवम्बर, 1993 में:—

पृष्ठ क्रमांक 3682 पर

(1) अनुसूची में रेखांक सं. में तारीख "5-2-91" के स्थान पर "5-2-1992" पढ़िए।

सीमा वर्णन में (अ) रेखा ख-ग में "पेढराखेड़ी, कोटोडी और पढराखेड़ी" के स्थान पर "पांढराखेड़ी, कोटोडी, और पांढराखेड़ी" पढ़िए।

(ब) रेखा ग-घ में "पेरेडगांव" के स्थान पर "येरेडगांव" पढ़िए।

[फा.सं. 43015/6/92—एल.एस. डब्ल्यू]
विनय वशिष्ठ, निदेशक

CORRIGENDUM

New Delhi, the 7th June, 1994

S.O. 1554.—In the notification of the Government of India in the Ministry of Coal, number S.O. 2587 dated the 10th November, 1993 published at pages 3682 to 3683 of the Gazette of India, Part-II, Section 3, Sub-Section (ii) dated the 4th December, 1993, at page 3683,—

- (1) in the Schedule, against serial number 3, in column "Area in hectares", for "41.00" read "141.00".
- (2) in boundary description .
 - (i) in line C-D, for "Yarandgaon" read "Yerandgaon".
 - (ii) in line D-A, for "startine point 'Z'" read "starting point 'A'".

[No. 43015/6/92-LSW]
VINAY VASISHTHA, Director

शुद्धि-पत्र

नई दिल्ली, 7 जून, 1994

का.आ. 1555 :—भारत के राजपत्र भाग-II, खंड-3, उपखंड (ii) में तारीख 4 दिसम्बर, 1993 में पृष्ठ 3686 से 3687 पर प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना का.आ. 2589 दिनांक 10 नवम्बर, 1993 में —
पृष्ठ क्रमांक 3686 पर अधिसूचना में :—

(1) रेखांक स. सी-1 (ई)/III/एच.आर./511-0392 के स्थान पर

रेखांक स. सी-1 (ई)/III/एच.आर./511-0392 पढ़िए।

(2) अनुसूची में जिला का नाम स्तम्भ के नीचे क्रम संख्या 6 में "बिवाड़ा" के स्थान पर "छिदवाड़ा" पढ़िए।

[फा.सं. 43015/7/92-एल.एस.डब्ल्यू.]

विनय वशिष्ठ, निदेशक

CORRIGENDUM

New Delhi, the 7th June, 1994

S.O. 1555.—In the notification of the Government of India in the Ministry of Coal number S.O. 2589, dated the 10th November, 1993, published at pages 3686 to 3687 of the

Gazette of India, Part II, Section 3, Sub-section (ii), dated the 4th December, 1993, at page 3687, in the Schedule, against serial number 6, under column heading "compartment number" for "P-222" read "P-422".

[No. 43015/7/92-LSW]
VINAY VASISHTHA, Director

नई दिल्ली, 13 जून, 1994

का.आ. 1556 :—केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) धारा 4 की उपधारा (1) के अधीन भारत के राजपत्र, भाग II, खंड 3, उपखंड (ii), तारीख 8 जनवरी, 1994 में प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना का.आ.स. 78, तारीख 16 दिसम्बर, 1993 द्वारा उस अधिसूचना से उपावृद्ध अनुसूची में विनिविष्ट परिक्षेत्र की भूमि में जिसका भाग 567.225 हेक्टर (लगभग) या 1401.61 एकड़ (लगभग) है, कोयले का पूर्वेक्षण करने के अपने आशय की सूचना दी थी;

और केन्द्रीय सरकार का यह समाधान हो गया है कि उक्त भूमि के भाग में कोयला अभिप्राप्त है ;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियाँ का प्रयोग करते हुए, उसमें संलग्न अनुसूची में वर्णित 534.493 हेक्टर (लगभग) या 1320.73 एकड़ (लगभग) भाग की भूमि में खनिजों के खनन, खदान, छोर करने, उनकी खुदाई करने, खीन करने, उन्हें प्राप्त करने और उन पर कार्य करने तथा उन्हें ले जाने के अधिकारों का अर्जन करने के अपने आशय की सूचना देती है।

टिप्पणी : 1.—इस अधिसूचना के अन्तर्गत आने वाले क्षेत्र के रेखांक स. एस.ई.सी.एल./बी.एस.पी./जी.एम./योजना भूमि/130, तारीख 16 मार्च, 1994 का निरीक्षण कलक्टर, शहडोल (मध्य प्रदेश) के कार्यालय में या कोयला नियंत्रक, कार्गिल हाउस स्ट्रीट, कटकता के कार्यालय में या साउथ ईस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग) सापत रोड, विलासपुर 495001 (मध्य प्रदेश) के कार्यालय में किया जा सकता है।

टिप्पण : 2 पूर्वोक्त अधिनियम की धारा 8 के उपबंधों की ओर ध्यान आकृष्ट किया जाता है, जिसमें निम्नलिखित उपबंध है :—

8. अर्जन की बाबत आपत्तियाँ :

(1) कोई व्यक्ति जो किसी भूमि में जिसकी बाबत धारा 7 के अधीन अधिसूचना निकाली गई है, हितबद्ध है, अधिसूचना के निकाले जाने से तीस दिन के भीतर सम्पूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उस पर के किन्हीं अधिकारों का अर्जन किए जाने के बारे में आपत्ति कर सकेगा।

स्पष्टीकरण—इस धारा के अर्थान्तर्गत यह आपत्ति नहीं मानी जाएगी कि कोई व्यक्ति किसी भूमि में कोयला उत्पादन के लिए स्वयं खनन सक्रियाएं करनी चाहता है और ऐसी सक्रियाएं केंद्रीय सरकार या किसी अन्य व्यक्ति को नहीं करनी चाहिए।

(2) उपधारा (1) के अधीन प्रत्येक आपत्ति सक्षम प्राधिकारी को लिखित रूप में की जाएगी और सक्षम प्राधिकारी आपत्तिकर्ता को स्वयं मुत्ते जाने का या विधि व्यवसायी द्वारा मुतवाई का अवसर देगा और ऐसी सभी आपत्तियों को मुत्ते के पश्चात् और ऐसी आंतरिक जांच, यदि कोई हो, करने के पश्चात् जो वह आवश्यक समझता है वह या तो धारा 7 की उपधारा (1) के अधीन अधिसूचित भूमि के या ऐसी भूमि में या उस पर के अधिकारों के संबंध में एक रिपोर्ट या ऐसी भूमि के विभिन्न टुकड़ों या ऐसी भूमि में या उस पर के अधिकारों के संबंध में आपत्तियों पर अपनी भिकारियों और उसके द्वारा का गई कार्यवाही के अभिलेख सहित विभिन्न रिपोर्टें केंद्रीय सरकार को उसके विनिश्चय के लिए देगा।

(3) इस धारा के प्रयोजनों के लिए वह व्यक्ति किसी भूमि में हितबद्ध समझा जाएगा जो प्रतिकर में हित का दावा करने का हकदार होता यदि भूमि या ऐसी भूमि में या उस पर के अधिकार इस अधिनियम के अंतर्गत अर्जन कर लिए जाते।

टिप्पण 3 —केंद्रीय सरकार ने कोयला नियंत्रक, 1 कार्टमिल हाउस स्ट्रीट, कलकत्ता को उक्त अधिनियम की धारा 3 के अधीन भारत के राजपत्र, भाग 2, खंड 3, उपखंड (ii) में तारीख 4 अप्रैल, 1987 को पृष्ठ 1397 से 1400 पर प्रकाशित अधिसूचना सं. का.आ. 905 तारीख 20 मार्च, 1987 द्वारा सक्षम प्राधिकारी नियुक्त किया है।

अनुसूची

धनपुरी ब्लॉक

सोहागपुर क्षेत्र

जिला : गढ़डोल (मध्य प्रदेश)

खनन अधिकार

(भूमि अर्जित करने के आणय को दर्शाते हुए)

क्रम सं.	ग्राम	पटवारी हस्ता सं.	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पणियाँ
1.	धनपुरी	98	सोहागपुर	गढ़डोल	144.973	भाग
2.	सगईकापा	98	सोहागपुर	गढ़डोल	263.220	भाग
3.	गोपालपुर	100	सोहागपुर	गढ़डोल	94.948	भाग
4.	अहिरगवां	100	सोहागपुर	गढ़डोल	13.181	भाग
5.	करवटी	99	सोहागपुर	गढ़डोल	18.173	भाग
कुल क्षेत्र					534.493 हेक्टर (लगभग)	
					या	
					1320.73 एकड़ (लगभग)	

1. ग्राम धनपुरी (भाग) में अर्जित किए जाने वाले प्लॉट संख्यांक :

48 (भाग), 50 (भाग), 60 से 66, 67 (भाग), 68 (भाग), 71, 72, 73 (भाग), 74 (भाग), 161 (भाग), 163 (भाग), 165 (भाग), 166 (भाग), 167 (भाग), 171 (भाग), 803, 804, 805 (भाग), 808 (भाग), 809 से 819, 820 (भाग), 821 (भाग), 822 (भाग), 941 (भाग) 942 (भाग), 943 (भाग), 945 (भाग), 986 (भाग), 993 (भाग), 994 (भाग), 995 से 996, 997 (भाग), 999 से 1134, 1135 (भाग), 1136 से 1138, 1139 (भाग),

1140 (भाग), 1141 से 1248 1249 (भाग), 1250 (भाग), 1251 से 1271, 1272 (भाग), 1280 (भाग), 1282 (भाग), 1293 (भाग), 1294 (भाग), 1295 से 1329, 1330 (भाग), 1333 (भाग), 1334 (भाग), 1335 (भाग), 1339 (भाग), 1340 से 1344, 1345 (भाग), 1346 से 1414, 1415 (भाग), 1416 (भाग), 1417, 1418 (भाग), 1419 (भाग), 1420 (भाग), 1421 (भाग), 1422 (भाग), 1425 (भाग), 1426 (भाग), 1427 (भाग), 1429 (भाग), 1430 से 1438, 1439 (भाग), 1440 से 1442, 1443 (भाग), 1444 (भाग), 1445 (भाग), 1449 (भाग), 1450 (भाग), 1451 से 1463, 1464 (भाग), 1465 (भाग), 1466 (भाग), 1467 (भाग), 1479 (भाग), 1480 (भाग), 1481 (भाग), 1482 (भाग), 1483 (भाग), 1487 (भाग), 1489 (भाग), 1490 (भाग), 1491 1492, 1493 (भाग), 1494 से 1531, 1532 (भाग), 1533 (भाग), 1534 (भाग), 1535 (भाग), 1576 (भाग), 1577 (भाग), 1578 (भाग), 1584 (भाग), 1585 से 1641, 1642 (भाग), 1643 (भाग), 1649 (भाग), 1651 (भाग), 1652 से 1721, 1722 (भाग) 1723, 1724 (भाग), 1727 (भाग), 1728 से 1732, 1733 (भाग), 1734 (भाग), 1743 (भाग), 1745 (भाग), 1746 (भाग), 1747 (भाग), 1980 से 1992, 1993 (भाग),

2. ग्राम सराईकापा (भाग) में अर्जित किए जाने वाले प्लॉट संख्यांक

1 से 183, 184 (भाग), 185 से 192, 193 (भाग), 194 (भाग), 198 (भाग), 199 (भाग), 204 (भाग), 205 से 267, 268 (भाग), 271 (भाग), 272 से 274, 275 (भाग), 276 (भाग), 277 (भाग), 278 (भाग), 282 (भाग), 283 से 290, 291 (भाग), 292 से 749, 750 (भाग), 753 (भाग), 754 (भाग), 759 (भाग), 761 (भाग), 762 से 777, 778 (भाग), 779 (भाग), 781 (भाग), 782 (भाग), 783 (भाग), 784 से 843, 844 (भाग), 845 (भाग), 849 (भाग), 850 से 855, 856 (भाग), 860 (भाग), 861 (भाग), 862, 863, 864 (भाग), 865, 866 (भाग) 875 (भाग), 881 (भाग), 905.

3. ग्राम गोपालपुर (भाग) में अर्जित किए जाने वाले प्लॉट संख्यांक

207 (भाग), 208 (भाग), 209 (भाग), 210, 211 (भाग), 212 (भाग), 213 (भाग), 214 (भाग), 215 से 236, 237 (भाग), 241 (भाग), 242 (भाग), 243 (भाग), 245 (भाग), 246 (भाग), 271 (भाग), 272, 273, 274 (भाग), 275, 276 (भाग), 277 से 379.

4. ग्राम ग्रहिरगवां (भाग), में अर्जित किए जाने वाले प्लॉट संख्यांक

248 (भाग), 249, 250, 251 (भाग), 286, 287 (भाग), 288 से 290, 291 (भाग), 305 (भाग).

5. ग्राम करकटो (भाग) में अर्जित किए जाने वाले प्लॉट संख्यांक

124 (भाग), 125, 126, 127, 128 (भाग), 131 (भाग), 133 (भाग), 253 (भाग), 432 (भाग), 433 (भाग), 435 (भाग), 436, 437 (भाग), 445 (भाग) 446 (भाग), 447 (भाग), 473 (भाग), 474 (भाग), 477 (भाग), 478, 479 (भाग), 480 से 504, 505 (भाग) 506 (भाग), 507 (भाग), 508 (भाग), 509 से 514, 515 (भाग), 516 (भाग) 519 (भाग), 520, 521, 522 (भाग), 523 से 528, 529 (भाग), 535 (भाग), 537 (भाग), 538, 539 (भाग), 540 (भाग)

सीमा वर्णन :

क-ख : रेखा ग्राम ग्रहिरगवां से बिन्दु 'क' से प्रारंभ होती है और प्लॉट सं. 251, 291, 305 से होकर जाती है। उसके बाद ग्राम धनपुरी से होकर जाती है और प्लॉट सं. 48, 49, 68, 67, 73, 74, 161, 163, 165, 167, 166, 167, 168, 171, 941, 942, 943, 945, 1993 से होकर जाती है, ग्राम सराईकापा में प्रवेश करती है, प्लॉट सं. 184, 194, 193, 198, 199, 204, 268, 271, 275, 276, 277, 278, 291, 282 से होकर जाती है। उसके बाद नरगरा नामा से होकर जाती है और ग्राम धनपुरी में प्रवेश करती है, प्लॉट सं. 1651, 1649, 1642, 1643, 993, 994, 997, 986, 1249, 1250, 1272, 1280, 1282, 1294 1293, 1330, 1333, 1334, 1335, 1345, 1339, 821, 822 से होकर जाती है और 'ख' बिन्दु पर मिलती है।

ख-ग-घ-ड. रेखा धनपुरी ग्राम से प्लॉट सं. 822, 820 से होकर जाती है उसके बाद प्लॉट सं. 804 की पूर्वोत्तर सीमा से होकर जाती है। उसके पश्चात् प्लॉट संख्यांक 805, 808, 1418, 1419, 1420, 1421, 1422, 1416, 1415, 1425, 1426, 1427, 1429, 1445 से होकर जाती है और 'ड' बिन्दु पर मिलती है।

ड-घ रेखा ग्राम धनपुरी में प्लॉट संख्यांक 1445, 1444, 1443, 1439, 1449, 1450, 1464, 1465, 1466, 1467, 1140, 1139, 1135, 1479, 1480, 1481, 1482, 1483, 1490, 1489, 1493, 1487, 1532, 1533, 1534, 1535, 1584, 1578, 1577, 1576, 1733, 1734, 1727, 1724, 1722, 1743, 1745, 1746, 1747 से होकर जाती है। उसके पश्चात् नरगरा नाला है होकर जाती है। उसके बाद प्लॉट सं. 681, 684, की दक्षिणी सीमा के साथ चलती है और ग्राम सराईकापा में प्लॉट सं. 750, 753, 754, 761, 759, 778, 779, 781, 782, 783, 866, 875, 864, 861, 881, 860, 856, 849, 845, 844 से होकर प्रवेश करती है। उसके पश्चात् ग्राम करकटी में प्रवेश करती है, प्लॉट सं. 539, 540, 537, 535, 529, 522, 519, 516, 515, 508, 507, 506, 505, 432, 433, 435, 437, 445, 446, 448, 477, 474, 473 से होकर जाती है और "च" बिन्दु पर मिलती है।

च-छ-ज रेखा ग्राम करकटी में प्लॉट सं. 473, 479, 253, 133, 131, 128, 124 से होकर जाती है। उसके बाद
 झ-ञ-क : ग्राम गोपालपुर में प्रवेश करती है प्लॉट सं. 271, 274, 276, 246, 245, 243, 242, 241, 237 से होकर जाती है। उसके बाद प्लॉट सं. 237, 236, 234, 233, की पश्चिमी सीमा, प्लॉट सं. 210, 207, की दक्षिणी सीमा के साथ-साथ चलती है, उसके पश्चात् प्लॉट सं. 207, 208, 209, 211, 214, 212, 213 से होकर जाती है, उसके बाद ग्राम अहिरगवां में प्रवेश करती है और प्लॉट सं. 287, 248, 251 से होकर जाती है और आरंभिक बिन्दु "क" पर मिलती है।

[फा.सं. 43015/8/92-एल.एस.डब्ल्यू]

विनय बशिष्ठ,

New Delhi, the 13th June, 1994

S. O. 1555 — Whereas by the notification of the Government of India in the Ministry of Coal, number S.O. 78 dated the 16th December, 1993 under sub-section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act) and published in the Gazette of India in Part-II, Section 3, Sub-Section (ii) dated the 8th January, 1994, the Central Government gave notice of its intention to prospect for coal in 567.225 hectares (approximately) or 1401.61 acres (approximately) of the lands in locality specified in the Schedule annexed to that notification;

And whereas the Central Government is satisfied that coal is obtainable in a part of the said lands;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 7 of the said Act, the Central Government hereby gives notice of its intention to acquire the rights to mine, quarry, bore, dig and search for, win, work and carry away minerals in the lands measuring 534.493 hectares (approximately) or 1320.73 acres (approximately) described in the Schedule appended hereto.

Note 1. The plans bearing number SECL/BSP/GM/PLANNING/Land/130 dated the 16th March, 1994 of the area covered by this notification may be inspected in the office of the Collector, Shahdol (Madhya Pradesh) or in the office of the Coal Controller, 1 Council House Street, Calcutta, or in the Office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road, Bilaspur-495001 (Madhya Pradesh).

Note 2. Attention is hereby invited to the provisions of section 8 of the aforesaid Act, which provides as follows :—

Objection to acquisition :

(1) Any person interested in any land in respect of which a notification under section 7 has been issued may, within thirty days of the issue of the notification, object to the acquisition of the whole of any part of the land or of any rights in or over such land.

Explanation :—It shall not be an objection within the meaning of this section for any person to say that he himself desires to undertake mining operations in the land for the production of coal and that such operations should not be undertaken by the Central Government or by any other person.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and the competent authority shall give the objection an opportunity of being heard either in person or by a legal practitioner and shall, after hearing all such objections and after making such further

enquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under sub-section (1) of section 7 or of rights in or over such land, or make different report in respect of different parcels of such land or of rights in or over such land, to the Central Government, containing his recommendations or the objections, together with the record of the proceedings held by him, for the decision of that Government.

- (3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land or any rights in or over such land were acquired under this Act."

Note 3. The Coal Controller, 1, Council House Street, Calcutta has been appointed by the Central Government as the competent authority under section 3 of the said Act, vide notification number S.O. 905, dated the 20th March, 1987, published in the Gazette of India, Part II, Section 3, Sub-Section (ii), dated the 4th April, 1987 at pages 1397 to 1400.

SCHEDULE

DHANPURI BLOCK

SOHAGPUR AREA

DISTRICT : SHAHDOL (MADHYA PRADESH)

MINING RIGHTS

(Showing intention to acquire lands)

Serial number	Village	Patwari Halka number	Tahsil	District	Area in hectares	Remarks
1.	Dhanpuri	98	Sohagpur	Shahdol	144.973	Part
2.	Saraikapa	98	Sohagpur	Shahdol	263.220	Part
3.	Gopalpur	100	Sohagpur	Shahdol	94.946	Part
4.	Ahirkawan	100	Sohagpur	Shahdol	13.181	Part
5.	Karkati	99	Sohagpur	Shahdol	18.173	Part

Total area : 534.493 hectares
(approximately)
or
1320.73 acres
(Approximately)

1. Plot numbers to be acquired in village Dhanpuri (Part) :—48(part), 59(part), 60 to 66, 67(part), 68 (part), 71, 72, 73(part), 74(part), 161(part), 163(part), 165(part), 166(part), 167(part), 171(part), 803, 804, 805(part), 803(part), 809 to 819, 820(part), 821(part), 822(part), 941 (part), 942(part), 943(part), 945 (part), 986(part), 993(part), 994(part), 995 to 996, 997(part), 999 to 1134, 1135(part), 1136 to 1138, 1139(part), 1140(part), 1141 to 1248, 1249 (part), 1250(part), 1251 to 1271, 1272 (part), 1280(part), 1282(part), 1293(part), 1294(part), 1295 to 1329, 1330 (part), 1333(part), 1334(part), 1335(part), 1339(part), 1340 to 1344, 1345(part), 1346 to 1414, 1415(part), 1416 (part), 1417, 1418(part), 1419 (part), 1420(part), 1421(part), 1422(part), 1425(part), 1426(part), 1427 (part), 1429(part), 1430 to 1438, 1439(part), 1440 to 1442, 1443(part), 1444(part), 1445(part), 1449(part), 1450(part), 1451 to 1463, 1464(part), 1465(part), 1466(part), 1467(part), 1479(part), 1480(part), 1481(part), 1482(part), 1483(part), 1487(part), 1489(part), 1490(part), 1491, 1492, 1493 (part), 1494 to 1531, 1532(part), 1533(part), 1534(part), 1535 (part), 1576 (part), 1577(part), 1578 (part), 1584 (part), 1585 to 1641, 1642 (Part), 1643(part), 1649(part), 1651(part), 1652 to 1721, 1722(part), 1723, 1724(part), 1727(part), 1728 to 1732, 1733(part), 1734 (part), 1743(part), 1745(part), 1746(part), 1747(part), 1980 to 1992, 1993(part).

2. Plot numbers to be acquired in village Saraikapa (part) :—1 to 183, 184(part), 185 to 192, 193(part), 194 (part), 198 (part), 199(part), 1204 (part), 205 to 267, 268 (part), 271 (part), 272 to 274, 275 (part), 276(part), 277(part), 278(part), 282(part), 283 to 290, 291(part), 292 to 749, 750 (part), 753(part), 754(part), 759(part), 761(part), 762 to 777, 778(part), 779(part), 781(part), 782(part), 783(part), 784 to 843, 844(part), 845(part), 849(part), 850 to 855, 856(part), 860(part), 861(part), 862, 863, 864(part), 865, 866(part), 875(part), 881 (part), 905.

3. Plot numbers to be acquired in village Gopalpur (part) :—207(part), 208(part), 209(part), 210, 211(part), 212(part), 213(part), 214(part), 215 to 236, 237(part), 241(part), 242(part), 243(part), 245(part), 246(part), 271 (part), 272, 273, 274(part), 275, 276(part), 277 to 379.

4. Plot numbers to be acquired in village Ahirgawan (part) :—248(part), 249, 250, 251(part), 286, 287 (part), 288 to 290, 291(part), 305(part).

5. Plot numbers to be acquired in village Karkati (Part) : 124(part), 125, 126, 127, 128(part), 131(part), 133(part), 253(part), 432(part), 433(part), 435(part), 436, 437(part), 445(part), 446(part), 447(part), 473(part), 474(part), 477(part), 478, 479(part), 480 to 504, 505(part), 506(part), 507(part), 508(part), 509 to 514, 515(part), 516(part), 519(part), 520, 521, 522(part), 523 to 528, 529(part), 535(part), 537(part), 538, 539(part), 540 (part).

Boundary description:

A—B

Line start from point 'A' in village Ahirgawan and passes through plot numbers 251, 291, 305, then enters in village Dhanpuri passes through plot numbers 48, 59, 68, 67, 73, 74, 161, 163, 165, 167, 166, 167, 166, 171, 941, 942, 943, 945, 1993 enters in village Saraikapa, passes through plot numbers 184, 194, 193, 198, 199, 204, 268, 271, 275, 276, 277, 278, 291, 282 then through Nargara Nullah and enters in village Dhanpuri, passes through plot numbers 1651, 1649, 1642, 1643, 993, 994, 997, 986, 1249, 1250, 1272, 1280, 1282, 1294, 1293, 1330, 1333, 1334, 1335, 1345, 1339, 821, 822 and meets at point 'B'.

B—C—D—E

Line Passes in village Dhanpuri through plot numbers 822, 820 then passes along the north-eastern boundary of plot number 804 then through plot numbers 805, 808, 1418, 1419, 1420, 1421, 1422, 1416, 1415, 1425, 1426, 1427, 1429, 1445, and meets at point 'E'.

Line passes in village Dhanpuri through plot numbers 1445, 1444, 1443, 1439, 1449, 1450, 1464, 1465, 1466, 1467, 1140, 1139, 1135, 1479, 1480, 1481, 1482, 1483, 1490, 1489, 1493, 1487, 1532, 1533, 1534, 1535, 1584, 1578, 1577, 1576, 1733, 1734, 1727, 1724, 1722, 1743, 1745, 1746, 1747 then passes through Nargara Nullah along the southern boundary of plot numbers 681, 684 then and enters in village Saraikapa then passes through plot numbers 750, 753, 754, 761, 759, 778, 779, 781, 782, 783, 866, 875, 864, 861, 881, 860, 856, 849, 845, 844, then enters in village Karkati, passes through plot numbers 539, 540, 537, 535, 529, 522, 519, 516, 515, 508, 507, 506, 505, 432, 433, 435, 437, 445, 446, 447, 477, 474, 473 and meets at point 'F'.

F—G—H—I—J—A

Line passes in village Karkati through plot numbers 473, 479, 253, 133, 131, 128, 124, then enters in village Gopalpur, passes through plot numbers 271, 274, 276, 246, 245, 243, 242, 241, 237, then passes along the western boundary of plot numbers 237, 236, 234, 233, southern boundary of plot numbers 210, 207, then through plot numbers 207, 208, 209, 211, 214, 212, 213, then enters in village Ahirgawan and passes through plot numbers 287, 248, 251, and meets at the starting point 'A'.

[No. 43015/8/92-LSW]

VINAY VASISHTHA, Director

नई दिल्ली, 16 जून, 1994

का. मा. 1557.—केन्द्रीय सरकार ने, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की (जिसे इसमें इसके पश्चात, उक्त अधिनियम कहा गया है) धारा 7 की उपधारा (i) के अधीन जारी की गई और भारत के राजपत्र भाग 2, खण्ड 3, उपखण्ड (ii), तारीख 7 मार्च, 1992 में प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना सं. का. मा. 711 तारीख 19 फरवरी, 1992 द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट परिक्षेत्र की भूमि में, जिसका माप 1459.47 एकड़ (लगभग) या 590.641 हैक्टर (लगभग) है, खनन अधिकारों का अर्जन करने के अपने आशय की सूचना दी थी,

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 8 के अनुसरण में केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है,

और केन्द्रीय सरकार का, पूर्वोक्त रिपोर्ट पर विचार करने के पश्चात और मध्य प्रदेश सरकार से परामर्श करने के पश्चात यह समाधान हो गया है कि इससे संलग्न अनुसूची में वर्णित 1459.47 एकड़ (लगभग) या 590.641 हैक्टर (लगभग) माप वाली भूमि में खनन अधिकार अर्जित किए जाने चाहिए।

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 9 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि उक्त अनुसूची में वर्णित 1459.47 एकड़ (लगभग) या 590.641 हैक्टर (लगभग) माप वाली भूमि में खनन अधिकार अर्जित किए जाते हैं।

इस अधिसूचना के अंतर्गत आने वाले क्षेत्र के रेखांक सं. एस. ई. सी. एल. बी. एस. पी./जी. एम./पी. एल. जी./लैंड/117 तारीख, 7 अक्टूबर, 1992 का निरीक्षण कलेक्टर बिलासपुर (मध्य प्रदेश) के कार्यालय में या को पता नियंत्रक, 3 काउंसिल हाऊस, स्ट्रीट कलकत्ता के कार्यालय में या साउथ ईस्टर्न कोल्फील्ड लिमिटेड (राजस्व अनुभाग) सीनर रोड, बिलासपुर-495001 (मध्य प्रदेश) के कार्यालय में किया जा सकता है।

अनुसूची

राजगमर सुंदर उत्तर विस्तार ब्लॉक

कोरबा कोयला क्षेत्र

जिला-बिलासपुर (मध्य प्रदेश)

खमन अधिकारी

क्रम सं.	ग्राम	हल्का सं.	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पणियां
1.	कसला	7	कोरबा	बिलासपुर	124.264	भाग
2.	गोरमा	7	कोरबा	बिलासपुर	321.191	भाग
3.	ठाकुरखेता	7	कोरबा	बिलासपुर	145.196	संपूर्ण
कुल :					590.641	हेक्टर (लगभग)
					1459.47	एकड़ (लगभग)

ग्राम कसला (भाग) में अर्जित किए जाने वाले प्लॉट संख्याक

49(भाग), 51 से 78, 80(भाग)
50(भाग), 79(भाग), 81 और 82

ग्राम गोरमा (भाग) में अर्जित किए जाने वाले प्लॉट संख्याक

असर्वेक्षित

ग्राम ठाकुरखेता में अर्जित किए जाने वाले प्लॉट संख्यांक (संपूर्ण)

1 से 101 तक

सीमा वर्णन :

- क-ख-ग: रेखा ग्राम बला-कसला की सम्मिलित सीमा से आरम्भ होती है और प्लॉट सं. 50, 49, प्लॉट सं. 82 की दक्षिणी सीमा से होकर ग्राम कसला की ओर, उसके बाद प्लॉट सं. 80, 79 स और भागतः ग्राम कसला-गोरमा की सम्मिलित सीमा के साथ-साथ होकर आगे जाती है और "ग" बिन्दु पर मिलती है।
- ग-घ-ङ: रेखा ग्राम गोरमा (असर्वेक्षित) से होकर, उसके बाद भागतः ग्राम ठाकुरखेता तेलवतारा की सम्मिलित सीमा के साथ-साथ जाती है और "ङ" बिन्दु पर मिलती है।
- ङ-च-छ-ज: रेखा भागतः ग्राम ठाकुरखेता-पटरापाली, ग्राम ठाकुरखेता-बेला की सम्मिलित सीमा के साथ-साथ जाती है और "ज" बिन्दु पर मिलती है।
- ज-झ-झ: रेखा भागतः ग्राम गोरमा-बेला, ग्राम कसला-बेला की सम्मिलित सीमा के साथ-साथ जाती है और आरम्भिक बिन्दु "क" पर मिलती है।

New Delhi, the 16th June, 1994

S.O. 1557.—Whereas by the notification of the Government of India in the Ministry of Coal number S. O. 711 dated the 19th February, 1992, issued under sub-section (1) of section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act) and published in Part II, Section 3, Sub-Section (ii) of the Gazette of India, dated the 7th March, 1992, the Central Government gave notice of its intention to acquire the mining rights in the lands measuring 1459.47 acres (approximately) or 590.641 hectares (approximately) in the locality specified in the Schedule appended to that notification;

And whereas the competent authority, in pursuance of section 8 of the said Act, has made his report to the Central Government;

And whereas the Central Government, after considering the report aforesaid and after consulting the Government of Madhya Pradesh, is satisfied that the mining rights in the lands measuring 1459.47 acres (approximately) or 590.641 hectares (approximately) described in the Schedule appended hereto should be acquired.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 9 of the said Act, the Central Government hereby declares that the mining rights in the lands measuring 1459.47 acres (approximately) or 590.641 hectares (approximately) described in the said Schedule are hereby acquired.

The plan bearing number SECL/BSP/GM(PLG.)/Land/117 dated 7th October, 1992 of the area covered by this notification may be inspected in the office of the Collector, Bilaspur, Madhya Pradesh or in the office of the Coal Controller, 1, Council House Street, Calcutta or in the office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road, Bilaspur-495001 (Madhya Pradesh).

SCHEDULE

RAJGAMAR FAR NORTH EXTENSION BLOCK

KORBA COALFIELD

DISTRICT—BILASPUR (MADHYA PRADESH)

MINING RIGHTS

Serial number	Village	Halka Number	Tahsil	District	Area in hectares	Remarks
1.	Kesla	7	Korba	Bilaspur	124.264	part
2.	Gorma	7	Korba	Bilaspur	321.191	part
3.	Thakurkheta	7	Korba	Bilaspur	145.186	Full

Total :—

590.641 hectares
(approximately)
or
1459.47 acres
(approximately)

Plot numbers to be acquired in village Kesla (part) :—

49 (part), 50 (part); 51 to 78, 79 (part), 80 (part), 81 and 82.

Plot numbers to be acquired in village Gorma (part) :—

Un-surveyed.

Plot numbers to be acquired in village Thakurkheta (full) :—

1 to 101.

BOUNDARY DESCRIPTION :

A—B—C : — Line starts from point 'A' on the common boundary of village Bela-Kesla and proceeds in village Kesla through plot numbers 50, 49 southern boundary of plot number 82 then through plot numbers 80, 79 and partly along the common boundary of Kesla-Gorma village and meets at point 'C'.

- C—D—E :** Line passes through village Gorma (Un-surveyed) then along the partly common boundary of villages Thakurkheta-Telwanara; and meets at point 'E'.
- E—F—G—H** Line passes along the common boundaries of village Thakurkheta-Patrapali, Thakurkheta-Bela and meets at point 'H'.
- H—I—A :** Line passes along the common boundaries of villages Gorma-Bela, Kesla-Bela and meets at the starting point 'A'.

[No. 43015/17/89-LSW]

VINAY VASISHTHA, Director

नई दिल्ली, 16 जून, 1994

का. आ. 1558.—केन्द्रीय सरकार ने, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) की (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) धारा 7 की उपधारा (1) के अधीन और भारत के राजपत्र, भाग 2, खण्ड 3, उपखण्ड (ii), तारीख 19 जून, 1993 में प्रकाशित, भारत सरकार के कोयला मंत्रालय की अधिसूचना सं. का. आ. 1345, तारीख 3 जून, 1993 द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट परिशेष की भूमि में, जिसका माप 823.24 एकड़ (लगभग) या 333.161 हैक्टर (लगभग) है, खनिजों के खनन, खदान, बोर करने, उनकी खुदाई करने और खोज करने, उन्हें प्राप्त करने, उन पर कार्य करने और उन्हें ले जाने के अधिकारों का अर्जन करने के अपने आशय की सूचना दी थी,

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 8 के अनुसरण में केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है,

और केन्द्रीय सरकार का, पूर्वोक्त रिपोर्ट पर विचार करने के पश्चात और मध्य प्रदेश सरकार से परामर्श करने के पश्चात यह समाधान हो गया है कि इससे संलग्न अनुसूची में वर्णित 823.24 एकड़ (लगभग) या 333.161 हैक्टर (लगभग) माप वाली भूमि में खनिजों के खनन, खदान, बोर करने, उनकी खुदाई करने और खोज करने, उन्हें प्राप्त करने, उन पर कार्य करने और उन्हें ले जाने के अधिकार अर्जित किए जाने चाहिए,

अतः अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 9 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि उक्त अनुसूची में वर्णित 823.24 एकड़ (लगभग) या 333.161 हैक्टर (लगभग) माप वाली भूमि में खनिजों का खनन, खदान, बोर करने, उनकी खुदाई करने और खोज करने, उन्हें प्राप्त करने, उन पर कार्य करने और उन्हें ले जाने के अधिकार अर्जित किए जाते हैं।

इस अधिसूचना के अन्तर्गत आने वाले क्षेत्र के सं. एम. ई. सी. एन./बी. एम. पी./जी. एम./प्लानिंग लेड/129, तारीख 31 दिसम्बर, 1993 वाले रेखांक का निरीक्षण कलेक्टर गृहडोल (मध्य प्रदेश) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कलकत्ता-700001 के कार्यालय में या साउथ ईस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग), सीपत रोड, बिलासपुर-495001 (मध्य प्रदेश) के कार्यालय में किया जा सकता है।

अनुसूची

विस्तार इलाक 'ड'

जमुना—कोतमा क्षेत्र

जिला—गृहडोल (मध्य प्रदेश)

खनन अधिकार

क्र. सं.	ग्राम का नाम	बंदोबस्त संख्यांक	तहसील	जिला	क्षेत्र हैक्टर में	टिप्पणी
1.	बेखल	463	अनूपपुर	गृहडोल	176.244	भाग
2.	बकाटोला	701	अनूपपुर	गृहडोल	105.086	भाग
3.	धनकुट्टा	489	अनूपपुर	गृहडोल	051.831	भाग
कुल क्षेत्र				333.161 हैक्टर (लगभग)		
या				823.24 एकड़ (लगभग)		

1. ग्राम दैखल (भाग) में अर्जित प्लॉट संख्यांक :

38 (भाग), 47 (भाग), 58 (भाग), 59 से 64, 65 (भाग), 66 (भाग), 67 से 71, 72 (भाग), 73 से 78, 79 (भाग), 80, 81 (भाग), 83 (भाग), 84 (भाग), 85 से 104, 105 (भाग), 106 (भाग), 107 से 110, 111, 112 (भाग), 113, 114 (भाग), 115 (भाग), 116 (भाग), 117 (भाग), 119 (भाग), 120 (भाग), 129 (भाग), 130 से 133, 134 (भाग), 135 (भाग), 136 (भाग), 137 (भाग), 138, 139, 140 (भाग), 141 (भाग), 142 (भाग), 143 (भाग), 144, 145 (भाग), 146 से 152, 153 (भाग), 154 (भाग), 156 (भाग), 164 (भाग), 175 (भाग), 176, 177 (भाग), 178 से 184, 185 (भाग), 197 (भाग), 198 (भाग), 199 (भाग), 200 (भाग), 201 से 225, 226 (भाग), 227 से 275, 315 (भाग), 279 (भाग), 316 (भाग), 317, 318, 319 (भाग), 320 (भाग), 321 (भाग), 361 (भाग), 362 (भाग), 364 (भाग), 365, 386 (भाग), 387 (भाग), 388 से 528, 529 (भाग), 530, 531 (भाग), 534 (भाग), 535 (भाग), 536, 537, 538 (भाग), 540 (भाग), 608 (भाग), 609 (भाग), 610, 611 (भाग), 612 (भाग), 613, 614 (भाग), 615 (भाग), 623 (भाग), 624, 625 (भाग), 626 (भाग), 627 (भाग), 638 (भाग), 647 (भाग), 648 (भाग), 649 (भाग), 650 (भाग), 651 से 667, 668 (भाग), 669 से 679, 680 (भाग), 698 (भाग), 704 (भाग), 705, 706 (भाग), 707, 708 (भाग), 709 (भाग), 710 (भाग), 934 (भाग), 936 (भाग), 937 (भाग), 938 (भाग), 939 (भाग), 940 से 944, 945 (भाग), 946 (भाग), 948 (भाग)

2. ग्राम बंकाटोला (भाग) में अर्जित प्लॉट संख्यांक :

41 (भाग), 63 (भाग), 64 (भाग), 65 (भाग), 66 (भाग), 67 से 72, 73 (भाग), 75 (भाग), 76 (भाग), 79 (भाग), 80 (भाग), 81 (भाग), 82 (भाग), 83 से 86, 87 (भाग), 92 से 180, 181 (भाग), 183 (भाग), 187 (भाग), 188 (भाग), 189 (भाग), 190, 191, 192 (भाग), 193, 194, 195 (भाग), 196 (भाग), 203 (भाग), 205 (भाग)

3. ग्राम धनकुट्टा (भाग) में अर्जित प्लॉट संख्यांक :

36 (भाग), 37, 38 (भाग), 44 (भाग), 46, 47, 48 (भाग), 49 से 62, 63 (भाग), 64 (भाग), 70 (भाग), 71 (भाग), 103 (भाग), 117 (भाग), 118 (भाग), 119 से 122, 123 (भाग), 124 (भाग), 127 (भाग)

सीमा वर्णन :

क-ख-ख-1-ख 2 रेखा ग्राम दैखल में बिन्दु "क" से आरम्भ होती है और प्लॉट संख्यांक 647, 648, 649, 650, 680, 698, 704, 706, 708, 709, 668, 710, 668, 226, 199, 200, 198, 164, 105, 106, 112, 114, 115, 116, 141, 140, 136 से होकर जाती है, उसके बाद दक्षिण दिशा की ओर मुड़ती है और प्लॉट संख्यांक 136, 143, 142, 145, 154, 156, 153, 156, 175, 177, 185, 934, 936 से होकर जाती है और बिन्दु "ख" "2" पर मिलती है।

ख-2-ग रेखा ग्राम दैखल में से जाती है और प्लॉट संख्यांक 936, 937, 938, 937, 939, 945, 946, 948 से होकर जाती है, उसके बाद ग्राम बंकाटोला में आगे बढ़ती है और प्लॉट संख्यांक 181, 183, 187, 189, 188, 192, 196, 195, 203, 205 से होकर जाती है, फिर ग्राम धनकुट्टा में प्रवेश करती है और प्लॉट संख्यांक 127, 123, 124, 117, 118, 117, 103 से होकर जाती है और बिन्दु "ग" पर मिलती है।

ग-ख-ख-1 रेखा, ग्राम धनकुट्टा में से जाती है और प्लॉट संख्यांक 103, 117, 71, 70, 63, 64, 36 से होकर जाती है, फिर भागतः प्लॉट संख्यांक 36 की उत्तरी सीमा के साथ-साथ जाती है, उसके बाद प्लॉट संख्यांक 38, 48, 44 से होकर जाती है और बिन्दु "घ-1" पर मिलती है।

घ-1-घ-2-ड रेखा, भागतः ग्राम धनकुट्टा और बंकाटोला की सम्मिलित सीमा के साथ-साथ जाती है, उसके बाद ग्राम बंकाटोला में प्लॉट संख्यांक 93 की उत्तरी सीमा प्लॉट संख्यांक 92, 87 की पश्चिमी सीमा के साथ-साथ आगे बढ़ती है, फिर प्लॉट संख्यांक 41 से होकर जाती है और बिन्दु "ड" पर मिलती है।

ड-ड-1-अ रेखा ग्राम बंकाटोला में प्लॉट संख्यांक 41, 87, 41, 87, 41, 87, 79, 80, 81, 82, 76, 75, 73, 66, 65, 63, 64 से होकर जाती है उसके बाद ग्राम दैखल में प्लॉट संख्यांक 129, 134, 120, 135, 119, 137, 117, 116, 38, 83, 84, 83, 81, 79, 47, 72, 66, 65, 58, 279, 315 से होकर आगे बढ़ती है, उसके बाद प्लॉट संख्यांक 275 की उत्तरी सीमा से, फिर प्लॉट संख्यांक 315, 316, 315, 319, 320, 321, 361 से होकर जाती है और बिन्दु "अ" पर मिलती है।

अ-कः रेखा, ग्राम दैखल में प्लॉट संख्यांक 361, 362, 364, 386, 387, 386, 529, 531, 534, 535, 540, 538, 608, 609, 611, 612, 614, 615, 623, 625, 626, 627, 638, 648, 647 से होकर जाती है और आरम्भिक बिन्दु "क" पर मिलती है।

New Delhi, the 16th June, 1994

S.O. 1558.—Whereas by the notification of the Government of India in the Ministry of Coal number S.O. 1345 dated the 3rd June, 1993 under sub-section (1) of section 7 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act) and published in Part-II, Section 3, Sub-section (ii) of the Gazette of India dated the 19th June, 1993, the Central Government gave notice of its intention to acquire the rights to mine, quarry, bore, dig and search for, win, work and Carry away minerals in the lands measuring 823.24 acres (approximately) or 333.161 hectares (approximately) in the locality specified in the Schedule appended to that notification;

And whereas the competent authority, in pursuance of section 8 of the said Act, has made its report to the Central Government;

And whereas the Central Government, after considering the report aforesaid and after consulting the Government of Madhya Pradesh, is satisfied that the rights to mine, quarry, bore dig and search for, win, work and carry away minerals in the lands measuring 823.24 acres (approximately) or 333.161 hectares (approximately) described in the Schedule appended hereto, should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 9 of the said Act, the Central Government hereby declares that the rights to mine, quarry, bore, dig and search for, win, work and carry away minerals in the lands measuring 823.24 acres (approximately) or 333.161 hectares (approximately), described in the said Schedule are hereby acquired.

The plan bearing number SECL/BSP/GM(Planning)/Land/129 dated the 31st December, 1993 of the area covered by this notification may be inspected in the office of the Collector, Shahdol (Madhya Pradesh) or at the Office of the Coal Controller, 1 Council House Street, Calcutta-700001 or at the Office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road, Bilaspur-495001 (Madhya Pradesh).

SCHEDULE

EXTENSION BLOCK 'B'

JAMUNA-KOTMA AREA

DISTRICT—SHAHDOL (MADHYA PRADESH)

MINING RIGHTS

Serial number	Name of Village	Settlement number	Tahsil	District	Area in hectares	Remarks
(1)	Daikhāl	463	Anuppur	Shahdol	176.244	Part
(2)	Bankatola	701	Anuppur	Shahdol	105.086	Part
(3)	Dhankutta	489	Anuppur	Sahadol	051.831	Part
Total					333.161 hectares (approximately) or 823.24 acres (approximately)	

1. Plot numbers acquired in village Daikhāl (Part) :—38 (part), 47 (part), 58 (part), 59 to 64, 65 (Part), 66 (part), 67 to 71, 72 (part), 73 to 78, 79 (part), 80, 81 (part), 83 (part), 84 (part), 85 to 104, 105 (part), 106 (part), 107 to 110, 111, 112 (part), 113, 114 (part), 115 (part), 116 (part), 117 (part), 119 (part), 120 (part), 129 (part), 130 to 133, 134 (part), 135 (part), 136 (part), 137 (part), 138, 139, 140 (part), 141 (part), 142 (part), 143 (part), 144, 145 (part), 146 to 152, 153 (part), 154 (part), 156 (part), 164 (part), 175 (part), 176, 177 (part), 178 to 184, 185 (part), 197 (part), 198 (part), 199 (part), 200 (part), 201 to 225, 226 (part), 227 to 275, 315 (part), 279 (part), 316 (part), 317, 318, 319 (part), 320 (part), 321 (part), 361 (part), 362 (part), 364 (part), 365, 386 (part), 387 (part), 388 to 528, 529 (part), 530, 531 (part), 534 (part), 535 (part), 536, 537, 538 (part), 540 (part), 608 (part), 609 (part), 610, 611 (part), 612 (part), 613, 614 (part), 615 (part), 623 (part), 624, 625 (part), 626 (part), 627 (part), 638 (part), 647 (part), 648 (part), 649 (part), 650 (part), 651 to 667, 668 (part), 669 to 679, 680 (part), 698 (part), 704 (part), 705, 706 (part), 707, 708 (part), 709 (part), 710 (part), 934 (part), 936 (part), 937 (part), 738 (part), 739 (part), 940, 944, 945 (part), 946 (part), 948 (part).

2. Plot numbers acquired in village Bankatola (Part) :— 41 (part), 63 (part), 64 (part), 65 (part), 66 (part) 67 to 72, 73 (part), 75 (part), 76 (part), 79 (part), 80 (part), 81 (part), 82 (part), 83 to 86, 87 (part), 92 to 180, 181 (part), 183 (part), 187 (part), 188 (part), 189 (part), 190, 191, 192 (part), 193, 194, 195 (part), 196 (part), 203 (part) 205 (part).

3. Plot numbers acquired in village Dhankutta (part) :— 36 (part), 37, 38 (part), 44 (part), 46, 47, 48 (part) 49 to 62, 63 (part), 64 (part), 70 (part), 71 (part), 103 (part), 117 (part), 118 (part), 119 to 122, 123 (part), 124 (part), 127 (part).

Boundary description :

A—B—B1—B2	Line starts from point 'A' in village Daikhal and passes through plot numbers 647, 648 649, 650, 680, 698, 704, 706, 708, 709, 668, 710, 668, 226, 199, 200, 198, 197, 198, 164, 105, 106, 112, 114, 115, 116, 141, 140, 136, then the line turns towards south direction and passes through plot numbers 136, 143, 142, 145, 154, 156, 153, 156, 175, 177, 185, 934, 936 and meets at point "B2".
B2—C	Line passes in village Daikhal and passes through plot numbers 936, 937, 938, 937, 939, 945, 946, 948 then proceeds in village Bankatola and passes through plot numbers 181 183, 187, 189, 188, 192, 196, 195, 203, 205, then enters in village Dhankutta and passes through plot numbers 127, 123, 124, 117, 118, 117, 103 and meets at point 'C'.
C—D—D1	Line passes in village Dhankutta and passes through plot numbers 103, 117, 71, 70, 63, 6 36, then partly along the northern boundary of plot number 36, then through plot number 38, 48, 44 and meets at point 'D1'.
D1—D2—E	Line passes partly along the common boundary of villages Dhankutta and Bankatola, then proceeds in village Bankatola along the northern boundary of plot number 93, western boundary of plot numbers 92, 87, then through plot number 40 and meet at point 'E'.
E—E1—F	Line passes in village Bankatola through plot numbers 41, 87, 41, 87, 41, 87, 79, 80, 81 82, 76, 75, 73, 66, 65, 63, 64, then proceeds in village Daikhal through plot numbers 129 134, 120, 135, 119, 137, 117, 116, 38, 83, 84, 83, 81, 79, 47, 72, 66, 65, 58, 279, 315, then northern boundary of plot number 275, then through plot numbers 315, 316, 315, 31 320, 321, 361 and meets at point 'F'.
F—A	Line passes in village Daikhal through plot numbers 361, 362, 364, 386, 387, 386, 529, 531, 534, 535, 540, 538, 608, 609, 611, 612, 614, 615, 623, 625, 626, 627, 638, 648, 647 and meets at the starting point 'A'.

[No. 43015/2/91-LSW]

VINAY VASISHTHA, Director

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 15 जून, 1994

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 15th June, 1994

क्र. भा. 1559.—केन्द्रीय सरकार, इस मंत्रालय के दिनांक 28 जून, 1991 की अधिसूचना संख्या जी-35012/2/91-एफ-II के प्रनुक्रम में तथा तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उपधारा 3 के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए डा. ए. एन. सक्सेना, वित्तीय सलाहकार, पेट्रोलियम और प्राकृतिक गैस मंत्रालय को तेल उद्योग विकास बोर्ड में वित्तीय सलाहकार के रूप में दिनांक 28-06-93 से दो वर्ष से अधिक अवधि के लिए या जब तक वे वित्तीय सलाहकार के पद का त्याग नहीं करते हैं, इनमें से जो पहले हो, नियुक्त करती है।

[संज्ञा जी-35012/2/91-वित्त-II]

डी. एस. बालसुब्रह्मण्यन्, उप सचिव (वित्त)

S.O. 1559.—In continuation of this Ministry's Notification No. G-35012/2/91-Fin. II dated the 28th June, 1991 and in exercise of powers conferred by clause (b) of sub-section (3) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints Dr. A. N. Sakseena, Financial Adviser, Ministry of Petroleum & Natural Gas as a Member of Oil Industry Development Board for a further period of two years w.e.f. 28-6-93 or till he demits the office of Financial Adviser, whichever is earlier.

[No. G-35012/2/91-Fin. II]

E. S. BALASUBRAMANIAN, Dy. Secy. (Finance)

नई दिल्ली, 15 जून, 1994

क्र. आ. 1560.—केन्द्रीय सरकार, इस मंत्रालय के दिनांक 04 जून, 1992 की अधिसूचना संख्या जी-35012/2/91-एफ-II के अनुक्रम में तथा तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उपधारा 3 के खण्ड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री टि. एन. आर. राव, सचिव पेट्रोलियम और प्राकृतिक गैस मंत्रालय को तेल उद्योग विकास बोर्ड में एक सदस्य के रूप में दिनांक 04-06-94 से दो वर्षों से अनधिक अवधि के लिए या जब तक वे सचिव, पेट्रोलियम और प्राकृतिक गैस मंत्रालय के पद का त्याग नहीं करते हैं तब तक से जो पहले हो, नियुक्त करती है।

[संख्या जी-35012/2/91-विन-II]

टी. एस. बालसुब्रह्मण्यन्, उप सचिव (वित्त)

New Delhi, the 15th June, 1994

S.O. 1560.—In continuation of this Ministry's Notification No. G-35012/2/91-Fin. II dated the 4th June, 1992 and in exercise of the powers conferred by clause (a) of sub-section (3) of section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints Shri T. N. R. Rao, Secretary, Ministry of Petroleum and Natural Gas New Delhi, as a Member of the Oil Industry Development Board for a further period of two years w.e.f. 4-6-94 or till he demits the office of Secretary (Petroleum and Natural Gas) whichever is earlier.

[No. G-35012/2/91-Fin. II]

T. S. BALASUBRAMANIAN, Dy. Secy. (Finance)

नई दिल्ली, 15 जून, 1994

क्र. आ. 1561.—केन्द्रीय सरकार, इस मंत्रालय के दिनांक 3 मई, 1991 की अधिसूचना संख्या जी-35012/2/91-एफ-II के अनुक्रम में तथा तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) की धारा 3 की उपधारा 3 के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री जी. सी. गुप्ता, संयुक्त सचिव (पीएफ-II), व्यय विभाग, वित्त मंत्रालय को तेल उद्योग विकास बोर्ड में एक सदस्य के रूप में दिनांक 03-05-93 से दो वर्षों से अनधिक अवधि के लिए या जब तक वे संयुक्त सचिव पी एफ-II, व्यय विभाग के पद का त्याग नहीं करते हैं तब तक से जो पहले हो, नियुक्त करती है।

[संख्या जी-35012/2/91-विन-II]

टी. एस. बालसुब्रह्मण्यन्, उप सचिव (वित्त)

New Delhi, the 15th June, 1994

S.O. 1561.—In continuation of this Ministry's Notification No. G-35012/2/91-F. II dated the 3rd May, 1991 and in exercise of powers conferred by Clause (b) of Sub-Section (3) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints Shri D. C. Gupta, Joint Secretary (PF II), Deptt. of Expenditure, Ministry of Finance as a Member of the Oil Industry Development Board for a further period of two years w.e.f. 3-5-93 or till he demits the office of Jt. Secretary, PF II, Deptt. of Expenditure, whichever is earlier.

[No. G-35012/2/91-F. II]

T. S. BALASUBRAMANIAN, Dy. Secy. (Finance)

श्रम मंत्रालय

नई दिल्ली, 22 अप्रैल, 1994

क्र. आ. 1562.—केन्द्रीय सरकार ने यह समाधान हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (द) के उपखण्ड (VI) के उप-अध्यायों के अनुसरण में, भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या

क्र. आ. 2448 दिनांक 22 अक्टूबर, 1993 द्वारा किसी भी तेल क्षेत्र में सेवा की उक्त अधिनियम के प्रयोजनों के लिए 23 अक्टूबर, 1993 से छह मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था।

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छह मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है।

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (द) के उपखण्ड (VI) के परन्तुक प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 23 अप्रैल, 1994 से छह मास की और कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[संख्या एस-11017/5/85-डी-1(ए)]

एम. एस. पराशर, अवर सचिव

MINISTRY OF LABOUR

New Delhi, the 22nd April, 1994

S.O. 1562.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provision of sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour S.O. 2448 dated the 22nd October, 1993, the service in any Oil field to be a public utility service for the purposes of the said Act, for a period of six months from the 23rd October, 1993 ;

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months ;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares the said industry to be a public utility service for the purpose of the said Act, for a further period of six months from the 23rd April, 1994.

[No. S-11017/5/85-D.I (A)]

S. S. PRASHER, Under Secy.

नई दिल्ली, 22 जून, 1994

क्र. आ. 1563.—केन्द्रीय सरकार ने यह समाधान हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (द) के उपखण्ड (vi) के उपखण्डों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या क्र. आ. 2410 दिनांक 22 अक्टूबर, 1993 द्वारा किसी भी तेल क्षेत्र में सेवा की उक्त अधिनियम के प्रयोजनों के लिए 10 जनवरी, 1994 से छह मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था।

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छह मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है।

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (द) के उपखण्ड (VI) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 10 अप्रैल, 1994 से छह मास की और कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[सं. सं. एस-11017/5/85-वाद प्रार. (सी।)]

एम. एस. पराशर, अवर सचिव

New Delhi, the 22nd June, 1994

S.O. 1563.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of the provision of sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947) declared by the notification of the Government of India in the Ministry of Labour S.O. No. 240 dated the 22nd Dec. 1993 the Copper Mining Industry to be a public utility service for the purposes of the said Act, for a period of six months from the 10th Jan, 1994.

And whereas the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares the said industry to be a public utility service for the purpose of the said Act, for a further period of six months from the 10th July, 1994.

[No. S-11017/7/85-D.I(A)]
S. S. PRASHER, Under Secy.

नई दिल्ली, 24 जून, 1994

का. प्रा. 1561.—केंद्रीय सरकार ने यह समाधान हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (इ) के उपखंड (vi) के उपबंधों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना संख्या का. प्रा. 104 दिनांक 20 दिसम्बर, 1993 द्वारा किसी भी खनिज तेल (कच्चा तेल) मोटर और विमानन ग्लिफ्ट, जीजल, नेच, मिट्टी का तेल, ईंधन, स्नेहक तेल और इसी प्रकार के तेल शामिल हैं, के निर्माण या उत्पादन में लगे उद्योग में सेवाओं या उक्त अधिनियम के प्रयोजनों के लिए 29 दिसम्बर, 1993 से छ. मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था,

और केंद्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छ. मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है.

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खंड (इ) के उपखंड (vi) के अनुसूच द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए 29 जून, 1994 से छ. मास की और कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[संख्या एस-11017/2/84-डी-1 (ए)]

एस. एस. प्रशर, अवर सचिव

New Delhi, the 24th June, 1994

S.O. 1564.—Whereas the Central Government having been satisfied that the public interest so required had, in pursuance of provision of sub-clause (vi) of clause (n) of section 2 of Industrial Disputes Act, 1947 (14 of 1947), declared by notification of the Government of India in the Ministry of Labour S.O. No. 104 dated 20th December, 1993 the industry engaged in manufacture or production of mineral oil (crude oil, motor and aviation spirit, diesel oil, kerosene oil, fuel oil diverse hydrocarbon oils and their blends including synthetic fuels, lubricating oils and the like, to be a public utility service for the purpose of the said Act, for a period of six months, from the 29th December, 1993;

And whereas the Central Government is of opinion that public interest requires the extension of the said period of six months;

Now, therefore, in exercise of the powers conferred by proviso to sub-clause (vi) of clause (n) of section 2 of In-

dustrial Disputes Act, 1947 (14 of 1947), the Central Government hereby, declares the said industry to be a public utility service for the purpose of the said Act, for a further period of six months from the 29th June, 1994.

[No. S-11017/2/84-D.I (A)]

S. S. PRASHER, Under Secy.

नई दिल्ली, 12 मई, 1994

का. प्रा. 1565.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार स्टेट बैंक आफ हैदराबाद के प्रबन्धकों के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद (प्राप्त प्रवेश) के पत्रपट को प्रकाशित करती है, जो केंद्रीय सरकार का 12-5-94 को प्राप्त हुआ था।

[संख्या एल-12012/85/91-आई आर (बी-III) बी II]

एस. एस. के. राव, डेस्क अधिकारी

New Delhi, the 12th May, 1994

S.O. 1565.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad (A.P.) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of Hyderabad and their workmen, which was received by the Central Government on 12-5-1994.

[No. L-12012/85/91-IR (B-II)/B-I]

S. S. K. RAO, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT
HYDERABAD

PRESENT :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I

Dated, 15th day of April, 1994

Industrial Dispute No. 15 of 1991

BETWEEN

SBJI Staff Association,
General Secretary,
Central Office,
Hyderabad

.. Petitioner

AND

S.B.H. represented by its M.D.,
Head Office, Hyderabad

.. Respondent

APPEARANCES :

Sri B. G. Ravinder Reddy, Advocate—for the Petitioner.

M/s. K. Srinivasa Murthy and G. Sudha, Advocates—
for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-12012/85/91-IR (B-III) dated 2/3-5-1991 referred the following dispute under Section 10(1)(d) (2-A) of the Industrial Disputes Act, 1947 between the management of State Bank of Hyderabad and their workmen to this Tribunal for adjudication :

"Whether imposition of punishment of withdrawal of Head Cashier's Allowance for ever on Sri K. V. Ramamurthy, workman by the Management of State Bank of Hyderabad, Central Office, Gunfoundry, Hyderabad is justified? If not, to what relief he is entitled?"

This reference was registered as Industrial Dispute No. 15 of 1991 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the Petitioner-Association read as follows :—

It is submitted that Sri K. V. Rama Murthy the concerned workman S/o K. S. Chander Rao is aged about 40 years, occupation Cashier, State Bank of Hyderabad resident of H. No. 1-9-640/2, Vidyanagar, Hyderabad. The Respondent through Proceedings No. R. II/Gr. I/DA/3457 dated 1-4-1987 decided to take disciplinary action against the petitioner in respect of alleged acts of misconduct alleged to have been committed by him while working at Sanga Reddy Branch of the State Bank of Hyderabad. The Articles of charges and statement of imputations were enclosed to the said letter and the petitioner was called upon to defend himself in the enquiry initiated through the said letter. The Disciplinary Authority deputed Sri S. V. Hanumanth Rao, Branch Manager, ICRISAT Branch of State Bank of Hyderabad to conduct preliminary investigation in respect of the account M/s. Auditya Finance and Investment India Limited, maintained at State Bank of Hyderabad, Sanga Reddy Branch. On 3-12-86 he obtained statements from six employees and submitted his report to Disciplinary authority. The Petitioner has no knowledge about the report till today and even during the course of enquiry, the said report was not given to him even while cross examining the said Mr. Hanumanth Rao (MW-6). It is submitted that when the investigation officer himself appears as a witness during enquiry to explain certain points, the refusal to permit inspection of the report is in violation of the rules and principles of natural justice. But where based on the statement obtained by the said Mr. Hanumanth Rao, Disciplinary Authority finalised the charge sheet cum Enquiry notice dated 1-4-1987. Before issuing the charge sheet cum Enquiry Order it is incumbent upon the management to issue "Charge Memo" to the petitioner and obtained his explanation. Based on his explanation if the management is not satisfied then they can issue a charge sheet. In the initial stages petitioner was not given a reasonable opportunity to submit his explanation, the management straightaway proceeded with the enquiry. Regarding to opening of the said account, petitioner did not play any part and he was totally unconnected with the opening of the account. The workman never introduced Sri Agarwal as Regional Manager of M/s. Auditya Finance and Investment India Limited nor admitted that he introduce him as such. It is necessary to point out the Appellate Authority has categorically concluded vide his Order dated 25-7-1989 that "there is no record to show that the Appellant compelled the Accountant to open the account or to deviate from, or not to observe the formalities connected with the opening of the Limited Company account. The Appellate Authorities also concluded that there is no evidence on record to show that the appellant was benefited in any way in these transactions. There is also no evidence to show that appellant was aware of real identity of the imposter till the incident came to light. These findings clearly show that imposition of punishment is totally arbitrary and unjustified. A perusal of the letter dated 3-12-86 will categorically establish that there was no admission on the part of the appellant vis-a-vis the charges levelled against him. The authorities has resorted to rely on the statement of the charged employee dated 3-12-1986. The petitioner was not examined at the enquiry. His statement remains as unproved document. As it is no evidence it cannot be relied on and be included as evidence. In the matter of service rendered by the petitioner the authorities twisted the facts on record. They erred in their findings and the evidence shows that all the management witnesses MW-2, MW13 and MW-4 deposed that the petitioner used to offer such services to other customers also corroborating the evidence of each other. The authorities ought to have seen that there was never any complaint made by any of the Management witnesses regarding the alleged interest shown by the petitioner vis-a-vis Sri Agarwal ought to have drawn proper legal inference from the same.

Clause 19.5(j) of the Bipartite Settlement of 19-10-66 does not enumerate the acts which can be held/termed prejudicial to the interest of the Bank. The statement of imputations against him does not constitute misconduct enumerated in Clauses either 19.5 or 19.7 of the settlement. On the other hand Clause 19.7 (j) makes that as failure on the part of the employee. The authorities ought have seen that even according to the evidence or MW-4 the petitioner was engaged in customer service for other persons also and ought to have drawn proper legal inference from the same. Even the management witness MW-5 categorically stated that, if the parties wanted to carry the instruments personally to service branch, instead of by post, MW-5 used to obtained the permission of the Branch Manager/Accountant and only then handed over the schedule with the instruments to the party. In continuation he also made it clear that he handed over the schedules of M/s. Auditya Finance and Investments India Limited to the petitioner as he did in the other cases, as per the practice prevailed at the Branch. Therefore it is submitted that once it is conceded that the instruments were sent only with consent of the Branch Manager/Accountant, it can no longer be alleged that the workman is guilty of collusion with the party. What all was done by the employee was only "Customer Service" and the same is the "Motto" of every banking institution. The Respondent misinterpreted the same and made the employee to suffer for no fault of his. The Disciplinary Authority erred in presuming that the official liquidator may proceed against the Bank. The authorities ignored the fact that the company had cheated the general public and that the persons said to be the actual Regional Manager or the Company (the person who lodged complaint to the Bank) and also the Board of Directors were arrested by the Police. No claim is made by the Company against the Bank for liquidating the amount. In this case it is not the petitioner who opened the account and it was also beyond his authority. The authorities were good enough to hold that the officiating Branch Manager Sri P. V. Chalapathi Rao was the person who opened the account without following the procedure of the Bank. It is thus obvious that the petitioner cannot be involved in any of the proceedings by anybody. The petitioner is not liable for any punishment. The authorities erred in issuing a charge sheet just because a third person stated that the person who opened and operated is an imposter. They relied upon the said person who visited the Branch on 19-11-1986 and 22-11-1986 ignoring that he (the person who complained) was arrested by Police under cheating of the public. He was not examined during the course of enquiry. The complaint letter dated 24-11-86 would not constituted as evidence legally. The words "Imposter" "Fictitious" and "Froud" were taken for granted without any evidence on record which vitiated the Proceedings. Therefore the charge 521(4)-J is disproved. The findings arrived at by the disciplinary authority are neither based on facts nor on evidence on record. The charge sheet dated 1-4-1987 is in breach of the Bipartite Settlement dated 19-10-1966, and the proceedings issued by the Disciplinary authorities are invalid. The statement of imputations against the petitioner does not constitute a misconduct enumerated other in clause/para 19.5 or in para 19.7 of the Bipartite Settlement Clause 19.5(p) does not enumerate acts which can be held prejudicial to the interest of the Bank. The Respondent has also no power to impose punishment of withdrawal of the Head Cashier Allowance for ever and also treating the period from 31-12-1988 to the date of petitioner reporting at Zonal Office as "Off Duty". The order is bad. In the absence of evidence, the petitioner cannot be held guilty of the charge. It is therefore prayed that this Hon'ble Court may be pleased to pass an Award holding that the punishment of withdrawal of Head Cashier Allowance is wholly unjustified and further to hold that the employee is entitled to be continued as Head Cashier with special allowance of Category E with all consequential benefits right from 31-12-1988.

3. The brief facts of the counter filed by the Respondent Bank read as follows :—

While the Petitioner was working as Head Cashier at Sangareddy branch of the Respondent Bank, it was reported that he has committed serious irregularities. In relation to such misconducts imputed against him, a charge sheet was issued, copy of which is filed here with marked-I. When the misconducts were reported to the Disciplinary Action Authority, the Disciplinary Action Authority namely Regional Manager, of the Respondent had deputed the then Manager of the ICRISAT Branch Shri S. V. Hanumantha Rao to investigate and report the matter to him. There is no legal requirements as such to issue any memo and calling for explanation before framing the charges against an employee under the Bipartite Settlement. Even otherwise, the petitioner had reasonable opportunity when the charge sheet was issued to him and in fact he effectively defended himself before the enquiry. There is no violation of any of the rules or principles of natural justice. An enquiry was initiated with an Enquiry Officer and an Enquiry Officer was appointed. During the course of the enquiry the petitioner had afforded with all reasonable opportunity both under principles of natural justice and under the provisions of Bipartite Settlement. That the charges consist of various commissions and omissions namely that the petitioner had introduced an imposter Sri Rajendra Kumar Agarwal as Regional Manager of M/s. Aditya Finance and Investment India Limited to the Accountant of the Respondent Branch and opened Current Account through which the cheques and drafts were collected and there was a fraud of the extent of Rs. 1,22,214.00. After the enquiry the Enquiry Officer gave his findings basing upon the admission made by the Petitioner dated 3-12-1986 in relation to the charges which were proved before the enquiry Officer by the evidence of Sri S. V. Hanumantha Rao who has conducted the preliminary investigation. The Enquiry Officer gave his findings holding the petitioner guilty of the charges levelled against him. That the Disciplinary Action Authority after going through all the aspects of the case, based upon the evidence recorded before the Enquiry Officer, the Enquiry Officer's findings, and came to a conclusion that the charges were proved and awarded the punishment of dismissal to the petitioner. Aggrieved by this order of dismissal, the petitioner had preferred an appeal before the Appeal Authority who after considering the entire material on record, the Enquiry report and the Disciplinary Action Authority's findings stated that the charges are not proved and that only charge that the petitioner was having contacts with the imposter account holder so close that they were not desirable and found that such contact of the petitioner was prejudicial to the interest of the Bank. The petitioner was reinstated in service and the punishment was reduced to that of withdrawal of Head Cashier Allowance. The reference to provisions of 19.5 (JO and 19.7 J) of the Bipartite Settlement are irrelevant in the context. It is submitted that in fact after going through all the aspects of the case, carried to and from Sangareddy Branch to service branch and payments collected and the ultimate discovery of fraud on the account in the background of the fact that the petitioner introduced the account holder would justify the conclusions of the Appellate Authority. It is submitted that the observations of the Disciplinary Action Authority are no longer relevant when once the Appellate Authority passes its final decision and in fact the Appellate Authority has taken all these things into consideration and set aside the punishment of dismissal and reduced the punishment to that of withdrawal of Head Cashier Allowance proportionate to the offence proved. It is submitted that the officer who has opened the account, i.e. the then Officiating Branch Manager was also charge sheeted and for his lapse, he was awarded with the punishment of stoppage of promotion for two years. It is submitted that in accordance with the Appellate Authority orders it is proved that the petitioner had introduced the imposter whom he did not know personally and intimately for opening a current

account in the name of the limited Company and that he not only introduced the person as Regional Manager of the company but also helped the imposter in many ways which resulted in fraud causing huge financial loss to the Bank. However, taking a lenient view in the circumstances he was awarded the punishment of withdrawal of Head Cashier Allowance for ever. The Appointment authority has been empowered to impose the punishment of withdrawal of Head Cashier allowance for ever and also trading the period from 31-12-1988 till he reported for duty as off duty. The petitioner is not entitled for any of the reliefs prayed for and the petition is liable to be dismissed with costs.

4. The brief facts of the rejoinder to the counter filed by the Respondent by the Petitioner reads as follows:—

It is submitted that the Appellate Authorities also admitted vide his order dated 25-7-1989 no charge is proved on record i.e. the charge against the charged employee vide charge sheet dated 1-4-1987 are vague. The management witness MW-2 and MW-3 and MW-4 clearly submitted their evidence corroborating with each other that the service rendered by the petitioner to Sri Raj Kumar Agarwal Regional Manager of M/s. Aditya Finance and Investment India Private Limited was part of customer services rendered by him to customers of the branch and nothing else. The management witnesses MW-5 clearly stated that the service rendered by the petitioner to Sri Raj Agarwal was, with the consent and full permission of the Branch Manager/Accountant of the Bank as a part of customer service. Services rendered by the petitioner to Sri Raj Kumar Agarwal was only part of customer service. From the Zonal Manager order dated 25-7-1989 it is understood as the Appellate Authority came to the conclusion that the decision of the Disciplinary Authority was not correct and was not proved on record. So he set aside the orders of Disciplinary Authority and modified the order from that of 'dismissal' to 'removal' of Head Cashier allowance for ever. Just because a third person informed to the Bank that the said account holder is not the right man to open and operate the said account, it does not prove the said account holder is an imposter. The person who made a complaint with the bank was not examined during the course of enquiry either to establish the fraud or to establish that the people who opened account are not genuine. As such the enquiry is vitiated, as the said charge sheet is not based on explanation of the petitioner but decisions of the disciplinary authority. The petitioner never submitted any explanation, as he did not receive any memo earlier to charge sheet. The bias of the disciplinary authority is clearly established by the fact that his proceedings/findings are dated 25-10-88 when the enquiry officer actually sent his findings on 27-10-88 (These dates were clearly put in handwriting they cannot be construed as typographical errors are done by oversight and same is opposed to Principal of natural justice. It is submitted that the practice of sending instruments through customers or staff to service Branch at Hyderabad is, the then practice at the Branch which is evident from MW-5 statement at enquiry proceedings. Even the Management witness MW-5 categorically stated that, if the parties wanted to carry the instruments personally to service branch, instead of by post, MW-5 used to obtain the permission of the Branch Manager/Accountant and only then handed case the schedule with the instruments to party. In continuation he also made it clear that he handed over the schedules of M/s. Aditya Finance and Investment India Limited to the petitioner only after obtaining the permission of the Branch Manager/Accountant against acknowledgement of the petitioner in S.C. Books, and Peon delivery book as per the practice prevailed at the Branch. Hence it is submitted that the services rendered by the petitioner was not forbidden acts. So it is respectfully submitted that the charges levelled against the petitioner vide charge sheet dated 1-4-1987 were not proved on record. The said customer service cannot be prejudicial to the interest of the Bank.

Hence, imposing of punishment does not arise at all. Hence it is submitted that the period from 31-12-1988 to 8th August, 1990 cannot be treated as off-duty. There is no justification in treating the period i.e. the date of dismissal (31-12-1988) to the date of reporting at Zonal Office (8-8-1990) as 'Off-duty'. And further there is also no justification to withdraw the Head Cashier allowances for ever. The punishments (1) removing head Cashier Allowance, (2) Treating the period from 31-12-1988 to 8-8-1990 as off duty, not only resulted in monetary loss, postponement of increments but also to his career. It is therefore prayed that this Hon'ble Tribunal be pleased to pass an Award holding that the punishment imposed by the Management (1) removing Head Cashier allowance, (2) Treating the period from 31-12-1988 to 8-8-1990 as 'OFF-DUTY' are wholly unjustified, set aside the same and direct the Respondent to grant all the consequential benefits due to him.

5. The point for adjudication is whether imposition of punishment of withdrawal of Head Cashier's Allowance for ever on Sri K. V. Rama Murthy workman by the management of State Bank of Hyderabad, Central Office, Gunfoundry Hyderabad is justified or not?

6. No oral evidence have been adduced by either parties. But marked Exs. M-1 to M-34 on behalf of the Respondent Management. Ex. C-1 was marked on behalf of the Court.

7. In this case, the point to be seen is whether the charges alleged against the Petitioner-workman are proved or not. The Respondent-Bank by its charge memo dated 1-4-1987 alleged that the petitioner-workman while working as Head Cashier at Sanga Reddy introduced a person as Raj Kumar Agarwal, Regional Manager of M/s. Aditya Finance and Investment India Limited to the Accountant of the Branch who later on turned out to be an imposter and that he used to take the cheques for collection, tendered by the above account holder from Sanga Reddy to Hyderabad and was bringing payment advices and that all this was done by the petitioner-workman with fraudulent intention.

8. It is seen from the evidence on record that the account was opened by the officiating manager and he failed to follow the requisite procedure. If a customer comes for opening an account, particularly, the current account the concerned manager has to follow the procedure. In this case the Manager for the reasons, best known to himself did not follow the procedure. Had he followed the procedure laid down in the Bank Rules, for the purpose of opening an account, there would not have been any problem. It is also seen from the evidence that the workman merely introduces the person to the Manager, as the said person was brought by one Prakash who is a brother of an employee of the Bank, namely Mr. Sangameshwar Rao who was the colleague of the petitioner-workman while working at Dubbak Branch of the Bank. It cannot be understood as to how the Manager could circumvent the procedure even if an employee has introduced a person. The role of the Petitioner was limited to the extent of introduction. Whether a person is introduced or not, the account opening has to undergo the procedure. There is nothing in the evidence on record to show that the petitioner in any way prevailed upon or pressurised the Manager to open the account. In this regard the petitioner is relying on the observations made by the Appellate Authority in this proceedings dated 25-7-1989 which are extracted below :

From a perusal of the entire record of Disciplinary proceedings and also the details of the personal hearing recorded on 28-4-1989, I observe that the appellant introduced a person, to open a current account in the name of Aditya Finance and Investment (India) Limited, whom he did not know personally, as Regional Manager of the Company, to the officiating Branch Manager/Accountant. There is record to show that the account was opened by the officiating Branch Manager. It is also clear that the Appellant was not aware of the procedure relating to opening of current account of a limited Company. There is no record of the Appellant compelling the Accountant to open the account or to deviate from or not to observe the formalities connected with the opening of a current account.

In view of the above, it is clear that the Petitioner is in no way responsible for the opening of the account. Therefore, the charge to that extent fails. The findings of the Enquiry Officer are not properly arrived at. He failed to consider the evidence in its totality and failed to draw proper inferences from the oral and documentary evidence adduced before me. In this regard the findings of the Appellate Authority are to some extent reasonable and justified.

9. As regards the next issue as to whether the petitioner-workman was guilty of the charge of fraudulent intention in taking the instruments to Hyderabad and bringing back the payment advices back to Sanga Reddy. In this aspect the findings of the Appellate Authority are that the petitioner-workman was helpful to the imposter by taking the instruments personally to service Branch, Hyderabad and getting the payment advices, etc. and the petitioner workman involved himself with the imposter. The Appellate Authority observed in his proceedings dated 25-7-1989 that there is no evidence to show that the Appellant was benefited in any way in these transactions. There is also no evidence to show that the appellant was aware of the real identity of the imposter till the fraud came to light through the real Regional Manager of the Company. Hence the introduction of Sri Agarwal as Regional Manager of the Company by the Appellant was not deliberate, intentional and with mala fide intention. The Appellant as a prudent employee should not have introduced a person whom he did not know personally and intentionally particularly to open a current account in the name of a limited company. The appellant not only introduced an unknown person as Regional Manager of the Company but also helped the imposter in many ways, which resulted in perpetration of a fraud causing huge financial loss to the Bank."

It is seen from the record that whenever a party present out-station cheques or other instruments to the Branch, the procedure is to send them to the service branch at Hyderabad for getting payment invoices. If they are sent in post, it takes sometime. The allegation is that the Petitioner helped the party in getting the quick payment invoices. It is submitted by the Petitioner workman that the practice of sending instruments through staff to Hyderabad is being resorted to by all the rural branches to avoid postal delay and that is an authorised customer service. It is again on record that whatever the instruments that were taken to Hyderabad were with the authorisation of the Branch Manager only. It is in the evidence of MW-4 and MW-5 that even the concerned party can take to those instruments personally to Hyderabad if they want, with the permission of the Manager. The witness also stated that the instruments were handed over to the Petitioner by him, as per the practice, after obtaining the prior permission of the Branch Manager, as he did in other cases. There is nothing wrong in sending the instruments personally through the staff members as it avoids the delay. Even if it is assumed that they should be sent only by post, how does it make any difference for the purpose of obtaining payment invoices. Whether the instruments are taken personally or sent by post, the payment invoices have to be issued, if the instruments are in order. Therefore the obligation that the Petitioner-workman was held to the imposter and it was only with fraudulent intention is not correct. Further the appellate authority has recorded a categorical finding that there was no mala fide intention. Therefore the charge that he was involved in taking the instruments personally with fraudulent intention is not correct. It is not the case of the Respondent Bank that the cheques or instruments are not genuine. When the instruments are genuine they are bound to be encashed. In this regard the findings of the Enquiry Officer are only reserved and are not given with open mind. The Enquiry Officer failed to appreciate the evidence of the witnesses in a proper perspective. The findings are therefore perverse. In this regard, even the appellate authority erred in holding that the subsequent involvement of the petitioner by rendering a helping hand facilitated the perpetration of fraud. Because whatever the help was done, it was only customer service and it was with the authorisation and prior permissions of the Manager. This service can never perpetrate any fraud.

10. For these reasons, I am of the considered view that the charges alleged against the workman are not proved. Accordingly the punishment of withdrawal of Head Cashier Allowance for ever imposed against the workman is set aside. The workman shall be restored to his post of Head Cashier with all consequent benefits including of back wages.

11. In the result, the imposition of punishment of withdrawal of Head Cashier's Allowance for ever on Sri K. V. Ramamurthy, workman, by the Management of State Bank

of Hyderabad, Central Office, Gunfoundry, Hyderabad is not justified. Sri K. V. Ramamurthy shall be restored to his post of Head Cashier with full back wages and all consequential benefits right from 31-12-1988.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 15th day of April, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence

Witnesses Examined for the Workmen :

NIL

Witnesses Examined for the Management :

NIL

Documents marked for the Management (By consent)

- Ex. M-1/1-4-87—Disciplinary Proceedings issued against Sri K. V. Rama Murthy (Charge Sheet).
- Ex. M-2—Articles of Charge Sheet and Statement of imputation.
- Ex. M-3/27-4-87—Letter issued to the Workman by the Disciplinary Authority.
- Ex. M-4/27-4-87—Letter issued to K. V. Rama Murthy Head Cashier by the Disciplinary Authority.
- Ex. M-5/30-3-88—Disciplinary Proceedings letter to Sri v. Rama Murthy.
- Ex. M-6—Letter from the Disciplinary Authority to Sri K. V. Rama Murthy regarding change of enquiry officer.
- Ex. M-7—Letter from the Presenting Officer submitting brief in the case.
- Ex. M-8—Xerox copy of Presenting Officers brief.
- Ex. M-9/27-9-88—Findings of the Enquiry Officers against K. V. Rama Murthy.
- Ex. M-10/25-10-88—Notice issued to K. V. Rama Murthy by the Disciplinary Authority.
- Ex. M-11/25-10-88—Order of the Disciplinary Authority in the Disciplinary Proceedings against K. V. Rama Murthy.
- Ex. M-12—Representation by K. V. Rama Murthy to the Disciplinary Authority Regional Manager V.
- Ex. M-13/27-12-88—Proceedings dismissing Sri K. V. Rama Murthy.
- Ex. M-14/27-12-88—Final Order of the Disciplinary Authority against Sri K. V. Rama Murthy.
- Ex. M-15/10-2-89—Appeal File against the Findings Orders of the Disciplinary Authority and enquiry officer.
- Ex. M-16—Personal hearing given to Sri K. V. Rama Murthy Report U. Bhaskar Rao Zonal Manager.
- Ex. M-17/25-7-89—Letter issued by Appellate Authority to Sri K. V. Rama Murthy.
- Ex. M-18/25-7-89—Order of the Appellate Authority against K. V. Rama Murthy.
- Ex. M-19—Disciplinary Proceedings against K. V. Rama Murthy (one register)
- Ex. M-20—Xerox copy of current Account opening Form of SBH by Auditya Finance Investment.
- Ex. M-21—Xerox copy of specimen signature.
- Ex. M-22—Letter given by the Regional Manager Auditya Finance and Investment Limited to the Branch Manager, S.B.H., Sanga Reddy.
- Ex. M-23—Xerox copy of Ledger Book.
- Ex. M-24/21-11-86—Letter given by T. V. Chalapati Rao ACC S.B.H., Sanga Reddy to the Regional Manager S.B.H.

Ex. M-25/22-11-86—Letter given by G.A.P. I Year executive Director Auditya Finance Investment India Limited to the Manager, S.B.H., Sanga Reddy.

Ex. M-26/26-11-86—Letter given by the Regional Manager Auditya Finance and Investment India Limited to the Manager, S.B.H., Sanga Reddy.

Ex. M-27—Xerox copy of the photograph.

Ex. M-28—Statement given by P. V. Chalapathi Rao ACC, S.B.H. Saroornagar.

Ex. M-29—Statement given by K. Bavaganu.

Ex. M-30—Statement given by C. Gnaneswar Cashier Clerk S.B.H., Sanga Reddy.

Ex. M-31—Statement given by Jayagani.

Ex. M-32—Statement given by M. H. Khan.

Ex. M-33—Statement made by K. V. Rama Murthy.

Ex. M-34—Xerox copy of the Cheque Book issue and details, of the vouchers by K. V. Rama Murthy.

Documents marked for the Workmen

NIL

Documents marked for the Court

Ex. C-1—Part of the Ex. M-18 at page No. 6.

नई दिल्ली, 22 जून, 1994

का. आ. 1566.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ इण्डिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-6-94 को प्राप्त हुआ था।

[संख्या एन-12012/47/88-डी-III (ए) बी-आई]

एम. एस. के. राव, डेस्क अधिकारी

New Delhi, the 22nd June, 1991

S.O. 1566.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on the 22-6-94.

[No. L-12012/47/88-D.III (A)/B-I]
S. S. K. RAO, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT
HYDERABAD

Present :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I.

Dated : 18th day of May, 1994

INDUSTRIAL DISPUTE NO. 62 OF 1990

BETWEEN

The Workman of State Bank of India,
Vijaywada (AP) (Eluru Branch)
represented by the State Bank
Employees' Union, Vijaywada-2. .. Petitioner

AND

The Management of State Bank of
India, Vijaywada (AP) (Eluru Branch) .. Respondent

Appearances :

Sri C. Suryanarayana, Advocate for the Petitioner.

M/s. K. Srinivasa Murthy and G. Sudha, Advocates for
the Management.

AWARD

The Government of India, Ministry of Labour by its Order No. L-12012/47/88-D.II(A) IR. D. III dt. 29-10-1990 referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the Management of State Bank of India and their Workmen to this Tribunal for adjudication:

"Whether the action of the management of State Bank of India, Vijaywada in withdrawing the special allowance permanently, sanctioned to Sri S. V. K. Ramakrishna Rao, Head Clerk, State Bank of India, Eluru Branch, vide their letter No. DC/RIV/No. 287, dt. 20-12-85 was justified? If not, to what relief the workman is entitled to?"

This reference was registered as Industrial Dispute No. 62 of 1990 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the Petitioner is read as follows:—Sri S. V. K. Ramakrishna Rao has been in the permanent employment of the Respondent having been appointed as Clerk on 26-10-1971, at its Bhimunipatnam Branch. At Eluru Bazar he was promoted as Head Clerk from 9-3-1983 and was drawing the special allowance due thereon. He was placed under suspension when no charge and no enquiry was pending against him. The workman appealed to be Appellate Authority to set aside the suspension by his representation dt. 6-8-1984. By a further representation dt. 1-10-1984 the workman complained to the Appellate Authority how the officers attending the preliminary enquiry were resorting to creation of false reports abusing their authority "without issuing any charge sheet so far, causing prejudice to his rights and privileges" and appealed for investigation complaint in terms of para 517 of Sastry Award. It was alleged in the charge sheet that the workman behaved indecently on the premises of the Bank. The first was related to 7-7-1983 i.e. allegation of 7-7-1983 it found place in the charge sheet after 20 months. The second and third occasions alleged were on 13-7-1984 and 27-7-1984 followed by suspension dt. 30-7-1984 without any prior opportunity given to the workman to explain in the allegations. The reply dt. 12-2-1985 by the workman denying the charge as false and requesting to rescind the same was not accepted and a domestic enquiry was ordered and held on 20-4-1985, 25-5-1985, 11-6-1985, 12-6-85 and 27-6-85. Second show cause notice dt. 30-9-1985 was issued by the Disciplinary Authority agreeing with the findings of the enquiry officer that charges 2 and 3 were proved and proposing the punishment of withdrawing the special allowance and offering a personal hearing against the punishment proposed, but copies were not furnished to the workman. An appeal against the said punishment order dt. 20-12-1985 was filed by the workman Sri Ramakrishna Rao on 10-2-1986. But the appeal was not disposed of by the appellate authority within the sixty days stipulated by para 3(ii) of the 3rd Bipartite Settlement dt. 31-10-1979. The petitioner prays that the Hon'ble Tribunal may be pleased to set aside the action of the management of State Bank of India, Vijaywada in withdrawing the special allowance permanently, sanctioned to Sri S. V. K. Ramakrishna Rao, Head Clerk, State Bank of India, Eluru Branch vide their letter dt. 20-12-1985 as upheld by the Appellate Order No. Staff Con. No. 04 dt. 24-6-1986 declaring the same to be unjustified and consequently to direct that the said special allowance of the workman be restored and that the workman be paid his arrears with interest and grant all other benefits which are incidental and consequential to the same.

3. The brief facts of the counter filed by the Respondent Bank read as follows: It is true that the Petitioner-workman was promoted as Head Clerk on 9-3-1983 and was drawing the special allowance from the day he was promoted as Head Clerk. It is submitted in view of certain serious misconducts committed by the petitioner which is prejudicial to the interest of the bank, petitioner was suspended pending enquiry. It may be noticed the petitioner while he was working at Eluru Bazar Branch refused to check the telegrams bills relating to May 1983 and when Branch Manager asked to do the work he entered into argument with him and threw away books on the floor in erratic manner and behaved indecently before the staff and customers. On 13-7-1984 he shouted at the Branch Accountant in loud voice undermining the reputation the Branch Accountant on false facts and

again on 27-7-1984 petitioner shouted loudly in the Bank hall in the presence of other employees working in the Branch during office hours provoked them with irritating and indecent language. That was the main reason immediately after report came before making preliminary enquiry was made he was kept under suspension and then preliminary enquiry was done and as there is prima facie case charge sheet was issued. It may be noticed suspension order was issued by the Branch Manager as per terms in para 517 of the Sastry Award. The Respondent is filing entire disciplinary file before this Hon'ble Court which may be read as part and parcel of the counter. It may be noticed para 3 of the Bipartite Settlement dt. 31-10-1979 Clause 19.6 permits the management to withdraw special allowance if employee is found guilty of gross misconduct and the punishment order was given in terms of Bipartite Settlement only. It may be noticed management at the time of passing the punishment order kept in view numbers of years of service and took lenient view which resulted in passing order of withdrawal of special allowance when he ought to have been dismissed for the misconduct. Lenient attitude was adopted by the management and instead of dismissing only special allowance withdrawn and on facts it does not warrant to interference of this Hon'ble Court. There are no merits in the petitioner's case and he is not entitled for any relief as prayed. In view of the above this Hon'ble Court may be pleased to dismiss the petition with exemplary costs and confirm the order passed by the management.

4. The point for adjudication is whether the action of the Respondent in withdrawing the special allowance permanently, sanctioned to Sri S. V. K. Ramakrishna Rao, was justified or not?

5. Before going into the merits of the case, this Tribunal decided the validity of the domestic enquiry was a preliminary issue and this Tribunal passed an Order dt. 28-3-1994 holding that the domestic enquiry conducted in this case is not vitiated for any reasons.

6. At the very outset, in this case the suspension of the workman w.e.f. 30-7-1984 is violative of the procedure prescribed in the Sastry Award which is binding on the Respondent-Bank. That para 521(10)(a) of the Sastry Award lays down the procedure for institution disciplinary action and holding the enquiry. Para 521(10)(b) lays down that "Pending such an enquiry he may be suspended..." It is seen that suspension cannot be ordered without commencing "such enquiry" by way of instituting disciplinary action. It means that the order dt. 30-7-1984 made by the Regional Manager and Disciplinary Authority placing the workman under suspension is unsustainable. Para 517(1) of the Sastry Award confers another valuable right on the workman. A workman-employee who is treated unfairly or subjected to wrongful exaction by the Bank or a superior is entitled to complain against the same either to the Manager or to the officer appointed by the Manager in this behalf. It is seen that the workman shall also have the right of endorsing a copy thereof direct to the head of the department who is none other than the head of the disciplinary Cell in the Regional Office of the Bank i.e. the Chief Regional Manager, he being the Appellate Authority in the disciplinary case. In this case, the petitioner workman has not been furnished with copy of the Enquiry Officer's proceedings containing his findings. The disciplinary authority's action not only resulted in denial of reason above opportunity but also in violation of Article 14 of the Constitution of India and the principles of natural justice. Hence the punishment order is invalid and the Appellate Order confirming the same is equally invalid. Thus it is set aside accordingly. In SUDHAKAR vs. THE ADDL. REGISTRAR HIGH COURT BOMBAY [1991 (2) LLJ page 191 Bombay] it was held that imposition of a permanent disability is wholly unjust and disproportionate; hence it is illegal. The petitioner workman in this case is denied all other benefits incidental to his service. Considering all the facts and circumstances of the case the petitioner workman is not liable for any punishment and that the order passed by the Respondent-Bank is set aside and the Respondent-Bank is directed to restore the special allowance to the petitioner-workman.

7. In the result, the action of the Management of State Bank of India, Vijaywada in withdrawing the Special Allowance permanently, sanctioned to Sri S. V. K. Ramakrishna Rao, Head Clerk, State Bank of India, Eluru Branch, vide their letter No. DC/RIV/No. 257, dt. 20-12-1985 was not

justified. The Respondent-Bank is directed to restore the Special Allowance of the Petitioner-workman and pay the arrears.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 18th day of May, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence

Witnesses Examined for
the Petitioner :

NIL

Witnesses Examined for
the Respondent/Management :
M.W1 S. Venkateswara Rao

Documents marked for the Management (on prel. point)

- Ex. M1/1-3-85—Appointment order issued to M.W1.
- Ex. M2/1-3-85—Covering Letter enclosed in the Charge Sheet issued to S. V. Rao, E.O.
- Ex. M3/5-2-85—Copy of the Charge Sheet.
- Ex. M4/12-2-85—Explanation submitted by Sri S. V. K. Ramakrishna Rao.
- Ex. M5—Proceeding of the domestic enquiry (Register).
- Ex. M6 to M12—(7 documents) Documents marked on behalf of the management during the domestic enquiry.
- Ex. M13 to M19—(7 documents) Documents marked on behalf of petitioner during the domestic enquiry.
- Ex. M20—Enquiry Report.
- Ex. M21/13-9-85—(by consent) proceedings of the Regional Manager and Disciplinary Authority Region IV.
- Ex. M22/30-9-85—(by consent) Letter addressed to Sri S. V. K. Ramakrishna Rao by the Regl. Manager, Region IV.
- Ex. M23/11-11-85—(by consent) Proceedings of the Regl. Manager, Region-IV regarding Personnel hearing of Sri S. V. K. Ramakrishna Rao.
- Ex. M24/20-12-85—(by consent) Final proceedings of the Regl. Manager and disciplinary authority Region-V.
- Ex. M25/20-12-85—(by consent) Xerox copy of the letter issued to S. V. K. Ramakrishna Rao.
- Ex. M26/10-2-86—(by consent) Appeal against order dt. 20-12-85 of Regional Manager, S.B.I., Region IV.
- Ex. M27/20-6-86—(by consent) proceedings of the Chief Regional Manager and Appellate Authority.
- Ex. M28/24-6-86—Letter addressed to Sri C. V. K. Ramakrishna Rao by the Chief Regional Manager and Appellate Authority.

नई दिल्ली, 24 जून, 1994

का. भा. 1567.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक आफ मद्रा के प्रबंधन से संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 7, बम्बई के पंचपट को प्रकाशित करती है, जो: केन्द्रीय सरकार को 23-6-94 को प्राप्त हुआ था।

[संख्या एल—12012/90I91—आई आर (बी-3) बी आई]

एस. एस. के. राव, डैस्क अधिकारी

New Delhi, the 24th June, 1994

S.O. 1567.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government

1491 GI/94—4

herby publishes the Award of the Central Government Industrial Tribunal, No. 1, Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bank of Madhura and their workmen which was received by the Central Government on the 23-6-94.

[No. L-12012/90/91-IR/B-3(B.I)]
S. S. K. RAO, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1 AT BOMBAY

Present :

Shri Justice R. G. Sindhakar, Presiding Officer.

REFERENCE NO. CGIT-20 OF 1991

Parties :

Employers in relation to the management of Bank of Madura.

AND

Their Workmen

Appearances :

For the Management : Shri Patil.

For the Workmen : Shri Gokarna.

INDUSTRY : Banking STATE : Maharashtra
Bombay, dated the 10th day of June, 1994

AWARD

The Government of India, Ministry of Labour has, by letter dated 22nd March 1991, made the following reference to this Tribunal for adjudication under section 10(1)(d) read with section 2A of the Industrial Disputes Act, 1947.

"Whether the action of the management of Bank of Madura in engaging Ms. Radhika Sugvanam as a casual worker to do the clerical nature of job intermittently from the month of July, 1987 to Nov., 1988 and paying her Rs. 20/- per day is legal and justified? If not, to what relief the workman is entitled to?"

2. On behalf of the Bank of Madura Employees' Union, statement of claim has been filed by its General Secretary Shri Gokarn.

3. It is stated therein that M/s. Radhika Sugvanam was in the employment of the Bank, as a Casual Clerk and was paid Rs. 20/- per day, which action, according to the union is illegal and unjustified.

4. Ms. Radhika Sugvanam was employed in the vacancy caused by the long absence and subsequent termination of Mrs. Anjali Sachdev. The total number of days worked out to 207 during the years 1987 and 1988. She had worked without any interruption of service. The breaks given to her during 20-8-1987 and 2-11-1988 were only for the purpose of depriving her right to claim regular employment, and not that the breaks were necessitated. During the period of her break various other employees were employed on casual basis, as substitutes of Ms. Radhika. According to the union, the breaks were actually manipulated, and she should have been treated as on leave with wages. She is also entitled to the salary for the period of such breaks. As against this, she was paid only Rs. 20/- per day and only for the number of days on which she actually worked. The break up of the number of days for which she worked are given in para 2(b).

5. It is further contended that, the engagement of Ms. claim have been denied. It is contended that Ms. Radhika the permanent clerks, and particularly that of Mrs. Anjali Sachdev. It is further alleged that she performed the clerical nature of duties. She has raised the present dispute claiming the difference in the wages actually paid to her, and to which she was entitled. According to her she was entitled to the regular wages payable to the temporary employees appointed on vacancies created by absence/leave of permanent employees.

6. Written statement has been filed on behalf of the Bank management, and the averments made in the statement of claim have been denied. It is contended that Ms. Radhika was engaged only as a casual employee, in the vacancies caused due to the absence of different employees on different occasions, that too intermittently on the basis of exigencies. It is not true that she worked without any interruption. It is further denied that she worked for a total number of 207 days. It is also denied that she worked in the vacancy of Mrs. Anjali Sachdev, and that substitute employees were engaged during the break period of Ms. Radhika, and other allegations made therein are denied and prayer for rejection of the claim is made.

7. Rejoinder to this written statement has been filed on behalf of the union, and it has been stated therein that she worked from 11.00 a.m. to 06.00 p.m. except on Saturdays, and she worked on Saturdays from 11.00 a.m. to 03.00 p.m. The nature of work done by her is given in para 2 of the rejoinder. It is maintained that she worked for a total number of 207 days. It is further contended that the employees of the Bank are governed by the provisions of the Bipartite Settlements between the Indian Bank's Association, and the All India Bank Employees' Association, and the National Confederation of Bank Employees, in terms of the settlement between the employees of Bank of Madura and their employees entered into on 7th August 1985. Names of certain persons said to be engaged in the break period of Ms. Radhika are also given in the rejoinder.

8. Once again, Bank of Madura filed another written statement and reiterated the contentions that she worked only as a Casual Worker, and she has performed some of the duties of those permanent workers on leave, in whose place she was engaged on her request. It is contended that she has not given any proof of having worked for full days. The Bank denied that diverse casual employees were engaged during the break period of Ms. Radhika and further contended that Ms. Radhika was not a permanent employee, and casual workers are engaged only in case of exigencies due to absence/leave of permanent employees. It is contended that the calculations of the total number of days given by the union included the holidays and Sundays, and the break period, and the entire exercise has been done in order to arrive at the figure of 207 days. It is reiterated that she worked with M/s. Hindustan Lever Limited and the Accountant General Office at Bombay on temporary basis. It is contended on behalf of the Bank that the burden of proving that she had worked for full days in the Bank is on the union, and according to the Bank management, she was engaged only on part-time/casual basis. It is further denied that she performed all duties of the permanent employees on leave, and it was contended that the burden of proof is on her to show that she did so. It is further contended that the provisions of Bipartite Settlements applied to the employees of the Bank of Madura. It is contended that there has been a separate set of settlement between the employers of Bank of Madura and its employees, and it is clear from the terms of settlement entered into between the Bank management and the union, that those provisions of the IV Bipartite settlement are applicable to the employees of Bank of Madura. It is finally denied that the Bank has entered into unfair labour practices.

9. The point that arises and which has been referred to this Tribunal for adjudication is, whether the action of the management of Bank of Madura in engaging Ms. Radhika as a casual worker to do the clerical nature of works, and paying her Rs. 20/- per day was legal and justified. In this connection, reference has been made to Shashtri Award and internal paragraph 508 of the same. Therein the classification of employees is given, and it states :

- "We direct that employees shall be classified as;
- (a) Permanent Employees
 - (b) Probationers
 - (c) Temporary Employees
 - (d) Part-time Employees"

The meaning of these expressions is also given. Casual employees are not found mentioned therein, nor the categories of casual workers has been referred to in any of the settlements or awards. In the circumstances, this issue has to be decided on the basis of the nature of work performed by her. In this connection reference could be made to para-

graph 2 of the written statement dated 3-10-1991, and therein it has been mentioned that during the period of her first engagement, from 16-7-1987 to 1-8-1987, for 15 days, she worked in the place of a permanent clerk, Mrs. S. V. Dongre. Paragraph 2-(b) further says that she was engaged in the leave/absence of permanent clerks. In one case, it is stated that she worked in the place of one Mr. K. S. Ramesh who acted as second signatory for the leave period of Smt. Indira-an Officer. Therefore, I find that she worked as a Clerk in the place of the clerical staff to whom leave was granted. In Desai Award of June 1962, on page No. 158, it dealt with the three types of employees, other than the permanent and the probationers. Therein also the category of casuals does not appear to have been dealt with. It is rather difficult to accept the defence advanced by the management that she was only a casual employee engaged to do the clerical nature of duties, and therefore not entitled to the benefits of regular clerks. As against this, reliance has been placed on an agreement entered into between the Bank of Madura Employees' Union and the Management dated 7th August, 1985, in which it is agreed that the provisions made by the IV Bipartite Settlement will be implemented in Bank of Madura. I see that the IV Bipartite Settlement is a continuation of the earlier settlements and it does not deal with the point of wages to be paid to the casuals. In the written argument it is submitted that the IV Bipartite Settlement does not provide for such wages to be paid to the casual employees, and it is also not shown that the Bipartite Settlement is reached between the Bank of Madura and its employees' union. However, I do not think it would be justified in depriving her of the regular salary that she would have earned working as a clerk during the period for which she worked as a clerk in the Bank.

10. The only demand that she has made is for payment of wages on the basis that she worked as clerk, and, there was no justification for paying her as only Rs. 20/- per day. She is right in making a grievance about this payment of Rs. 20/- per day, which in my opinion is, neither legal nor justified. Management will have to work out the amount she would have been entitled to, on the basis that she was employed as a clerk during that spell for which she worked, of course after deducting the amount paid to her on the basis of daily wages of Rs. 20/- per day. No further direction is called for, and award is accordingly made.

R. G. SINDHAKAR, Presiding Officer

नई दिल्ली, 8 जून, 1994

का. घा. 1568.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, यूको बैंक के प्रबन्धन में संलग्न नियोजकों और उनके कार्यालयों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक प्रधिकरण, बम्बई नं. 1 के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-6-94 को प्राप्त हुआ था।

[संख्या एन-12011/61/89-डी- II-ए]

मी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 8th June, 1994

S.O. 1568.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bombay No. 1 as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of UCO Bank and their workmen, which was received by the Central Government on 7-6-1994.

[No. L-12011/61/89-D-II-A]
C. GANGADHARAN, Desk Officer
ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, BOMBAY

PRESENT:

Justice R. G. Sindhakar, Presiding Officer.

Reference No. CGIT-28 of 1990

PARTIES:

Employers in relation to
UCO Bank.

AND

Their Workmen.

APPEARANCES:

For the Management:—Shri Koparde, Officer of the
Bank.For the Union:—Shri Parasnis representative of the
Union.

INDUSTRY Banking.

STATE: Maharashtra.

Bombay, dated 18th May, 1994

AWARD

By letter dated 16-4-1990 made following reference under section 10(1)(3) read with 2A of the Industrial Disputes Act, 1947:

"Whether the action of the management of UCO Bank in filling up the post of Head Cashiers Category 'E' as per the old Promotion Policy expired on 31-8-1986 and also the Seniority list as of 1-3-1986 is justified? If not, what relief the concerned workman are entitled to?"

2. Statement of claim has been filed on behalf of UCO Bank Employees Association by its Secretary Shri Akshar D. Parasnis. It has been stated therein that the Association raised dispute before the Labour Commissioner on 21-6-1988 in respect of filling up of Head Cashiers vacancy at D.N. Road Branch (6 in number) and 7th at Kalbadevi Branch. Before signing of the present promotion Policy Agreement dated 13-4-88 between the management of the Bank and the Association, two separate seniority lists of workmen in Clerical Cadre, one for the Accounts Department and the other for the Cash Department were maintained. The Cash Department was headed by Head Cashier Category 'E' and to fill up the vacancy of Head Cashier Category 'E' as per clause 5.2.13 of Promotion Policy Agreement dated September 1981 provided that one person in the seniority list for the region which is current at the time and the seniormost person from amongst them who offers himself for the vacancy will be selected if he is otherwise found eligible for the said post. Notification was issued by the Bank inviting application from the clerk in the Cash Department eligible for inclusion in the seniority list of Cash Department and seniormost applicant for a particular vacancy was selected to get the officer for the post. If the employee so offered, was in the 9th stage or above in the scale of pay, the Bank simultaneously offered the employee the post of Head Cashier Category 'E' and the post of Chief Cashier in the officers in Junior Management scale-I. The concerned employee was to opt either of these.

3. After the signing of the Promotion Policy Agreement dated 13-4-1988, seniority of clerical staff working in the Accounts Department and Cash Department was integrated and the first set of integrated seniority list was prepared on 1-6-1988. However, before that several discussions were held in 1986 and 1987 for revision of promotion Policy Agreement dated September 1981 and also for the integration of clerical staff, in the Cash and Accounts Department to form a general category of clerical staff with a common seniority. Pending finalisation of the matter, one agreement was reached on 1-9-1986 for the suspension of the operation of 1981 promotion Policy Agreement subject however, to the condition that certain promotion/postings should be made in accordance with the said settlement of 1981. One condition which was incorporated in para 3 of the agreement was that the selection in the vacancies of Head Cashier existing dated 31-8-1986 should be made from the seniority list of 1-3-1986 that is when the seniority was not integrated. Subsequently the Agreement dated 1-9-1986 mentioned in para 8 above also became a part of the Promotion Policy Agreement signed on 13-4-1988 and included as Short Recital (Annexure-1).

4. In terms of the Promotion Policy Agreement dated 13-4-1988 the post of Head Cashier Category 'E' should be filled up on the basis of common Seniority list to be prepared first on 1-6-1988 and then on 1-10-1988. Thereafter, the

seniority list was to be drawn twice a year as on 1st April and 1st October every year.

5. Promotion Policy Agreement dated 13-4-88 mentioned that the vacancies arising due to death/retirement/resignation of existing Chief Cashiers as also due to opening of new branches shall be filled up by Head Cashier Category 'E'.

6. According to the statement of claim there were 5 vacancies as on 31-8-1986, one at Khar, 2nd at Mulund, 3rd at Madame Cama Road, 4th at Warden Road and 5th at Nariman Point. Permanent Chief Cashiers from D. N. Road Branch were removed and posted at all the above five branches.

7. Two more vacancies arose after 31-8-1986, one at Kalanagar Branch, newly opened in December 1986 and other at D. N. Road Branch, due to retirement of Shri Bukhanwala on 1-6-1987 that is after 31-8-1986.

8. They were not filled up in spite of repeated reminders and in violation of provisions of the Promotion Policy Agreement. This act of the management has caused financial loss to the senior employees, who would have been selected in the same post long ago if the notification was made in time.

9. The management however, instead of admitting their lapse and regularising the violation of the Agreement had tried to impose arbitrary authority of right to assess requirement of manpower and adjustment of posts. It is their case that management did not have a right to do so the vacancies to be filled up were clearly identified in the promotion policy Agreements and there was no provision of further assessment of vacancies, or deployment or otherwise to abolish any vacancy of Head Cashier/Chief Cashier. This was not agreeable in the management and therefore, conciliation proceedings failed and reference made.

10. Prayer, therefore, is to pass an Award to compensation the senior employees who could have been selected in the posts mentioned in paras 14 and 15 on the statement of claim with retrospective effect from the date the vacancies arose. The direction to the Bank is sought, for issuing notification inviting applicants from the eligible employees included in the seniority list as on 31-8-1986 or otherwise as the case may be.

11. The management of the UCO Bank has filed statement opposing the claim of the Association, containing that it is the management's right to assess requirements and proposed promotion which has to be done on the basis of the agreed promotion policy also mentioned by the Association in its statement of claim. The management, however, contends that whenever the occasion arose of promoting the Policy has been adopted.

12. The parties relied upon the documents produced and submitted written arguments.

13. The management contended that the reference made to this Tribunal for adjudication has to be adjudicated upon and nothing more can be done by this Tribunal while adjudicating that dispute referred. This dispute referred is whether the action of the management of the UCO Bank in filling up the post of Head Cashier Category 'E' as per the old promotion policy expired on 31-8-1986 and also the seniority list as on 1-3-1986 is justified? This in my opinion is not happily worded. All the same, management have been right in saying that this Tribunal has to adjudicate upon a dispute and it is to be seen whether the action of filling up of the post is justified. It is submitted on behalf of the management that the prayer made by the Association for an award of compensation to the senior employees who could be selected in the posts mentioned in paras 14 and 15 above with retrospective effect from the date the vacancies arose is not consistent with the reference made to this Tribunal. The later part of the prayer directing issue of the notification is also not consistent with the dispute referred.

14. One admitted position is that there was a Promotion Policy Agreement in September, 1981 and another dated 13-4-1988. Pending negotiations between the management and the Association an agreement was reached on 1-9-86 and under that agreement it was agreed that operation of the 1981 Promotion Policy Agreement is to remain suspended. However, it was subject to a condition that certain promotions/postings are to be made in accordance with the settle-

ment or agreement of 1981. One such condition was that selection in the vacancies of Head Cashier existing as on 31-8-1986 should be made from the seniority list of 1-3-86 that is the list prior to integration of the clerks from the Account Department and Cash Department. It may be mentioned there at this stage that in the agreement dated 13-4-88 it was decided that there should be a common seniority list of clerks from both the departments namely Accounts Departments and Cash Departments. It also may be mentioned that this agreement of 1-9-1986 also became a part of the Promotion Policy Agreement signed on 13-4-1988 and included as short Recital Annexure-I. Therefore, so far as the vacancies of Head Cashiers existing as on 31-8-1986 are concerned they have to be filled up as per the Agreement of 1981 September and on the basis of seniority list as on 1-3-1986. This position is not disputed by the Bank management.

15. On the basis of this undisputed position the Association contends that the 5 vacancies existing as on 31-8-1986 in the branches namely Khar, Mulund, Madame Cama Road, Warden Road and Nariman Point ought to have been filled up by the Bank management on the basis of Agreement dated 1-9-1986. It is stated in the statement of claim that permanent Chief Cashiers from D. N. Road Branch were removed and posted at the above branches creating vacancies at D. N. Road Branch. Whatever it is the contention is that these 5 vacancies ought to have been filled in by the management on the basis of Agreement dated on 1-9-1986 and the criterion to be applied was the seniority as existing on 1-3-1986.

16. The management of the Bank contends that the promotion policy either of 1981 or of 1988 or intervening agreement of 1986 laid down policy on manner of promoting persons to that posts. The management had the right to determine the strength of staff depending upon actual need and cannot be compelled to continue or create posts and fill up the vacancies so created. It maintains that this is so in view of the relevant provision in PPS dated 13-4-1988 though provisions have been a quoted in the letter dated 15-3-1991. It is precisely the case of the Association that the management can not do this and was not justified in doing this. However, this is not a dispute that has been referred to this Tribunal for adjudication. What is referred is whether the filling up of the posts as per the old promotion policy expired on 31-8-1986 and also the seniority list as of 1-3-86 is justified. Considered from that point of view I think it will be difficult for this Tribunal to enter in to an arena which is not contemplated by the reference. In the statement of claim it has been mentioned that the new branch was opened at Kalanagar in December 1986 that is after 31-8-1986 and another vacancy arose at D. N. Road Branch due to retirement of Shri Bukhanwala on 1-6-1987 that is after 31-8-1986 and these vacancies have been filled up as per new promotion policy operative from 1-9-1986 and that is not in dispute.

17. A letter dated 18-6-1988 addressed by General Manager (Personnel) to Zonal Office, Bombay on the subject of filling up of two Head Cashiers vacancies existed as on 31-8-1986 in the Bombay CCA Region. It is seen that he has been advised to make selections of Head Cashiers-E as per seniority list as on 1-3-1986. For these posts sanction for filling up was given but the posts existed before 31-8-1986. In the circumstances, I find that the management has not committed any breach in filling up the post of Head Cashier Category 'E' as per the old promotion policy when it was applicable and that part of the reference will have to be answered in favour of the management holding that it was justified.

18. Then the later part is namely whether the workman are entitled to any relief will not arise.

19. The main grievance appears to be that the 5 vacancies at D. N. Road Branch created by transfer of permanent Chief Cashiers from that Branch, 5 Branches such as Khar, Mulund, Madame Cama Road, Warden Road and Nariman Point were not filled up as per the Agreement dated 1-9-86 on the basis of seniority obtaining on 1-3-1986. Unfortunately, this is not a dispute referred for adjudication. Assuming that this dispute also arises for adjudication. I would say that the management had contended that exigencies required deployment and that right of the management can not be taken away and the management can not be compelled to fill up vacancies and at any rate the Agreement dated 1-9-86

or 13-4-88 can not give assistance for contending that it is the duty of the management to fill up the vacancies as and when they arose irrespective of the fact that there is no need for those posts. This position has been clearly stated by the management in its reply dated 28-3-1989 to the conciliation officer and also in its reply to the Association statement in this proceeding. However, I must hasten to add this is not the point referred for adjudication. In the circumstances, I find that the action is justified and workman is not entitled to reliefs asked for and award is accordingly made.

R. G. SINDHAKAR, Presiding Officer

नई दिल्ली, 10 जून, 1994

का. घा. 1569—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मै. भारत कोकिंग कोल लिमि. के प्रबन्धन से संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक (सं. 1), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-6-94 को प्राप्त हुआ था।

[संख्या एन-20012/29/88-डी 3 (ए)/आई धार (कोल-I)]

सी. गंगाधरन, ईस्क अधिकारी

New Delhi, the 10th June, 1994

S.O. 1569.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of M/s. B.C.C.L. and their workmen, which was received by the Central Government on 10-6-94.

[No. L-20012/29/88-D III(A)/IR(Coal. 1)]
C. GANGADHARAN, Desk Officer
ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

Reference No. 113 of 1988

PARTIES:

Employers in relation to the management of M/S. Bharat Coking Coal Ltd., Koyla Nagar, Dhanbad.

AND

Their Workmen

PRESENT:

Shri P. K. Sinha, Presiding Officer.

APPEARANCES:

For the Employers—Shri B. Joshi, Advocate.

For the Workmen—Shri B. Lall, Advocate, and Shri D. K. Verma, Advocate.

STATE: Bihar.

INDUSTRY: Coal.

Dated, the 26th May, 1994

AWARD

By Order No. L-20012/29/88-D.III(A), dated, the 4th August, 1988, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the demand of Rashtriya Colliery Mazdoor Sangh that Gora Chand Mahto and 19 other workmen should be regularised in the service of M/s.

Bharat Coking Coal Ltd. from the year 1985, is justified? If so, to what relief the workmen are entitled?"

2. Annexed with this reference a list containing the names of 20 workmen including Gora Chand Mahto,

ANNEXURE 'A'

List of workmen at BCCL Koyla Bhavan/Koyla Nagar.

1. Md. Mukhtar,
Father—Md. Ratique,
Vill. Dorra,
P.O. Dorra,
Dist. Giridih.
2. Shri Gora Chandra Mahto,
Father—Kregendra Nath Mahto,
Vill. Dhagi,
P.O. Pradhakanta,
Dist. Dhanbad.
3. Shri Ram Narain Shaw,
Father—Late Jeout Shaw,
Vill. Mahammadpur,
P.O. Kariyath,
Dist. Bhojpur (Arrah).
4. Shri Sukhdev Mondal.
Father—
Vill. Kola Kusum,
P.O. Jagjivan Nagar,
Dist. Dhanbad.
5. Shri Rameshwar Mishra,
Father—Ramdeo Mishra,
Village—Baila (Baila)
P.O. Krishnagarh,
Dist. Bhojpur (Arrah).
6. Shrimati Lifa Devi,
Husband—Basudeo Turi,
Vill. Samanpur,
P.O. Nirajpur,
Dist. Dhanbad.
7. Shri Sanichar Hansda,
Father—Biswanath Hansda,
Vill. Kurmidih,
P.O. Kalyanpur,
Dist. Dhanbad.
8. Shri Lakhan Rajak,
Father—Ramdeo Rajak,
Vill. Rachhaia,
P.O. Dumria,
Dist. Gaya.
9. Shri Bulki Paswan,
Father—Dhulu Paswan,
Vill. Richri,
P.O. Hazaribagh,
Dist. Hazaribagh.
10. Shri Kajal Pramanik,
Father—Narain Chandra Praman—1,
Vill. Saraidhela,
P.O. Jagjivan Nagar,
Dist. Dhanbad.
11. Shri Lalu Raibhar,
Father—Shib Kajbhar,
Vill. Kikabora,
P.O. Fakorata,
Dist. Ajamgarh.
12. Shri Gopal Singh,
Father—Padameshwar Singh,
Vill. Darimahalla,
P.O. Darimahalla,
Dist. Dhanbad.
13. Smt. Fatma Devi,
Husband—Salim Ansari,
Vill. Maheshmunda,
P.O. Maheshmunda
Dist. Giridih.

14. Smt. Sudama Devi,
Husband—Late Romeshwar Sharma,
Vill. Munghyr,
P.O. Jamui,
Dist. Monkhyr.

15. Shri Ehsan Ansari,
Father—Chaku Ansari,
Vill. Koradih,
P.O. Jagjivan Nagar,
Dist. Dhanbad.

16. Shri Nimal Ghandra Mondal,
Father—
Vill. Saraidhella,
P.O. Jagjivan Nagar,
Dist. Dhanbad.

17. Shri Fulchand,
Father—
Vill.—
P.O.—
Dist.—

18. Shri Biren Gorai,
Father—
Vill.—
P.O.—
Dist.—

19. Shri Sadhan Gorai,
Father—
Vill.—
P.O.—
Dist.—

20. Shri Ghakradhar Gorai,
Father—
Vill.—
P.O.—
Dist.—

3. In its written statement the claim of the sponsoring Union is that all the 20 workmen concerned had been working as Gardener (Mali) in the premises of M/s. B.C.C. Ltd. since the year 1982 under the supervision of Sri C. P. Singh, Horticulture Supervisor of the management. The Head Gardener also supervised their work. The workmen had been working in the gardens maintained at the Guest House C.M.D. bungalow, Directors, bungalows, Koyla Bhawan's Office, Koyla Nagar Hospital and at Gol Chakkar etc. The services of these workmen, as per claim of the sponsoring Union, were transferable from one grade to another grade. The union further claimed that the workmen were initially getting Rs. 200/- per month which, after a year, was increased Rs. 230/- per month, even which was less than minimum wages applicable to the workmen.

4. Further claim of the sponsoring union is that when the concerned workmen requested for regularisation of their services and to pay them category wages, the management stopped them from service from the month of May, 1985, though the concerned workmen had worked for more than 240 days in a year since their appointment.

5. Ultimately the dispute raised by the sponsoring union was referred for adjudication.

6. Besides technical objection, the management in its written statement has submitted that no employer-employee relationship existed between the management and the concerned workmen. The management has given the procedure for making an appointment such as advertisement and selection stating therein that after selection appointment letters and Identity Card are issued to the candidates, and as workmen they are also issued wage slips, Bonus cards as well as made members of the C.M.P.F. It is submitted that when the concerned workmen claimed regularisation, they were asked to produce appointment letters, Identity Cards etc. But none of the concerned workmen produced any document to show that they were under the employment of the management at any time. The management has claimed that they are strangers. It is also submitted that if they were in the rolls of the management, they must have been paid wages, but they failed to produce any paper that they were so paid.

7. Further case of the management is that it had awarded contracts for construction of Bungalows for Directors and officers guest house and hospitals etc. and further contracts were awarded for plantation works for maintenance of goods environment. It has been stressed in the written statement that none of the concerned contractors when enquired by the management, came forward to claim that the concerned workmen were their employees. The management has claimed that the concerned workmen were never employed by the management in any capacity.

8. The workmen filed a rejoinder, disputing the claim of the management, also claiming that the workmen were not issued any wage slips in order to deprive them from regularisation of service.

9. Therefore, the main claim of the sponsoring union as placed before this Tribunal in their written statement is that they had been employed by the management to work as gardener since the year 1982 after which they worked continuously, atleast for more than 240 days per year, but since May, 1985 they were arbitrarily stopped from working by the management. The main claim, on the other hand, of the management is that none of these workmen had ever been employed by them either directly or through contractor, though the management has admitted that some contractors were engaged to do plantation work.

10. The point for consideration is that whether the claim of the sponsoring union is acceptable that the services of these 20 workmen should have been regularised by the management since 1985. Naturally, if the answer to this query is in affirmative, then the workmen would be entitled to regularisation of their services with attending benefits.

11. Both sides have adduced evidence in this regard and the sponsoring union has adduced evidence of three concerned workmen including that of Sudama Devi who, it appears, was widow of a workman of the management and was subsequently absorbed in the service of the management.

12. WW-1 is Sukhdeb Mandal whose name is at serial No. 4 of the annexure to the reference. In his evidence he claimed that he was a workman of M/s. C.C.L. and used to work as Mali in the Bungalow of C.M.D. He further said that Sri C. P. Singh, Incharge of Malies used to supervise and control their job and that they used to get wages at the rate of 230/- per month. He further said that it was Sri C. P. Singh who paid them wages. He claimed that all the concerned workmen started working as Mali with effect from 14-10-82 and worked as such upto 7-5-85 but were stopped from working with effect from 8-7-1985 (sic) without any notice or notice pay. This witness further claimed that they had worked continuously as mali and every year they had worked for more than 240 days. He said that the posts upon which they worked still exist. He, in the examination-in-chief, expressly denied that they were ever employed by the contractor.

13. WW-2 Sudama Devi has said about her late husband working in M/s. B.C.C. Ltd. and about his death while in service. She submitted that M/s. B.C.C. Ltd. after sometime gave her employment at Koyla Nagar to work as gardener in which capacity she worked for four years but was stopped from working with effect from 14-12-1985. She further said that after one year she was again given work in the office of Koyla Nagar but was again stopped from duty with effect from the date this dispute was referred for adjudication to this Tribunal. She also claimed to have produced papers relation to her employment to M/s. B.C.C. Ltd. after the death of her husband.

14. WW-3 Nimai Chandra Mandal, one of the concerned workmen, whose name is mentioned at serial No. 16 of the annexure to the reference has submitted that he was working as mali in the hospital of M/s. B.C.C. Ltd. continuously from October, 1982 and had worked there upto May, 1985. He was being paid Rs. 230/- per month as wages. Sri C.P. Singh was paying him wages. He claimed that the job of Mali was still available in the hospital of M/s. B.C.C. Ltd.

15. Therefore it will appear that these three workmen who came forward to give their statements for proving their claim, and who can be taken as representing the other concerned workmen, have made a similar claim that they were so em-

ployed by M/s. B.C.C. Ltd. itself in the year 1982. But the learned lawyer appearing on behalf of the workmen, in course of argument has relied more on the documents exhibited in the case particularly Ext. W-2 series which have tended to prove that one Om Prakash Singh, contractor, was issued continual letters by the management to confirm as having advised him to supply a particular number of labours per day for afforestation and horticultural work for a particular period for which he was to be paid a fixed amount as wage per day per head. Learned lawyer had taken much pain to argue that the letters in Ext. W-2 series clearly showed that no gardening or horticultural work was assigned to the aforesaid contractor, rather he was only a supplier of labours who after supply labours had nothing to do with them because that labours were placed at the disposal of the management which took work from them. On this ground the learned lawyer has disputed the claim of the management that certain contractors were given contract work relating to plantation.

16. On the other hand, learned Counsel for the management has submitted that even if Sri Om Prakash Singh had supplied labour, he would still be a contractor within the meaning of Sec. 2(1)(c) of the Contract Labour (Regulation & Abolition) Act, 1970 which includes in the definition also a person who supplies contract labour for any work of the establishment.

17. But the sponsoring Union has not made out any such case as argued at length by the learned counsel of the Union. The only case of the union was that these workmen were directly employed by M/s. B.C.C. Ltd., at a monthly payment. The three witnesses of the workmen also did not say anything about their having been supplied by a contractor for a limited period, at one time. This is a contradiction in their case and placement of their case in course of arguments.

18. In so far as Union's evidence is concerned I have only mentioned the evidence of those three witnesses in their examination-in-chief. Still contradictions are to be found therein. WW-1 says that all of them started working as Mali since 14-10-82 and worked as such upto 7-5-85. WW-2 submits that she was stopped from working as gardener with effect from 14-12-85 and that before being so stopped, she had worked therefore four years. This would also show that she was employed there much prior to 14-10-82 as claimed by WW-1. According to WW-1 they had worked as Mali for a period of little less than two years and seven months.

19. The evidence of WW-2 relates, up implication, her working as gardener in M/s. B.C.L. to the death of her husband. In this regard Ext. W-1 may be referred to which is a letter written to the Joint General Secretary of the sponsoring Union dated 19/20-8-83 by Additional Chief Personnel Manager of M/s. B.C.C.L. in which Joint General Secretary, in response to his letter dated 9-8-83 was intimated that the case of Smt. Sudama Devi widow of Rameshwar Shrama, Trammer of Katras Choitudi Colliery, was already settled and she already was working in the administration wing at Koyla Nagar. This letter does not say anything about having absorbed her in the post of gardener. But this letter is dated 19-8-83 which shows that prior to that in the year 1983 she was working in the Administration wing at Koyla Nagar. This contradicts the evidence of Sudama Devi and the claim of the sponsoring Union that during the year 1983 she was working as gardener. Moreover, as already seen, her clear case is that even after 8-7-85 she had continued working upto 13-12-85. She further has claimed that after the lapse of one year she again was given work in Koyla Nagar. Therefore, even considering the evidence of the sponsoring Union, contradictions are to be found and, atleast evidence of Sudama Devi, does not help much the sponsoring Union.

20. There is no documentary evidence whatsoever on the record to show that any of the concerned workmen, except Sudama Devi whose cause stands on a different footing, was directly appointed by the management, was on its roll and was being paid wages by it directly, or that they had continuously worked for the period which they have claimed to have worked. Further, their answers during cross-examination do not support their case.

21. MW-1 Sri C. P. Singh, Horticultural Supervisor in M/s. B.C.C. Ltd. has said that he had been looking after the work of Malies. He further stated that malies who were

appointed by the management had been issued letters of appointment but they did not deploy any workman in their establishment to work as mali on casual basis. He further said that the malies appointed by the management got pay slips and were paid wages from the pay counter of B.C.C.L. He denied that any of the concerned workmen was appointed as mali or was paid for such work by B.C.C.L. He submitted that at present they had 43 malies on the roll and had no requirement for more malies in their establishment.

22. MW-1 during the cross-examination admitted that none of the workmen got any letter of appointment from B.C.C.L. or any Identity Card. He admitted that he knew that the regular employees of B.C.C.L. got Identity Card, Bonus Card and were made a member of the Provident fund. He also admitted that none of the concerned workmen ever got bonus card, wage slips or provident fund slips. Perhaps in order to justify the aforesaid statement this witness said that they were made to understand that their job would be regularised. But he has not said as to who had given such assurance. He also has given an account of distribution of work amongst the concerned workman. He said that he and Gora Chand Mahato were working in the C.M.D. Bungalow, an five of the concerned workmen were working in five bungalows of the directors. Two and five of them were respectively, working in the hospital and in Koyla Bhavan. This counts only 14 of the concerned workmen though the claim is that 20 workmen were so employed.

23. This witness further admitted that they had no Attendance Register in their possession to show as to how many days they had worked in B.C.C.L. in a calendar year and amount of wages received by them from Sri C. P. Singh.

24. This witness has admitted that prior to working as mali in the bungalow of C.M.D., he was working in the residence of the Chief Engineer in the private capacity and prior to that he had worked in Koyla Bhavan, while the same was constructed, as Mazdoor.

25. Similarly WW-2 also admitted that she had not received Identity Card from the management nor she got pay slip. WW-3 also admitted that he had no paper to show that he had worked in the hospital in B.C.C.L. He claimed that Sri C. P. Singh used to pay their wages on obtaining their receipt on the Pay Register. He further stated that Sri B. R. Iha, the Manager of the Township used to prepare their wages. He also admitted that they were getting only wages and not the bonus or other financial benefits.

26. If as many as 20 persons had regularly worked as mali and were paid their wages directly by M/s. B.C.C.L. as claimed by them, there was bound to be some documentary evidence in that regard. There is not documentary evidence with the workmen. It is unlikely that the Manager of the Township would have been preparing the wage slips of the workmen working as mali.

27. On the other hand, MW-1 Sri C. P. Singh, as said earlier, had denied that any of the aforesaid persons had ever worked as mali in the establishment. He denied that the management ever had made payment to them or that he ever had made any such payments.

28. MW-2, Sri N. M. Sahay, Manager (Administration), appears to have signed over Ext. W-2 series as the then Dy. Manager (Administration). About Ext. W-2 he said in his evidence that the management had engaged Om Prakash as Contractor for executing afforestation job which was temporary in nature. For example, he submitted that pouring of water to saplings would not be required during rainy season. According to this witness the Contractor, Om Prakash, was engaged by them on other work also. In cross-examination his witness admitted that Ext. W-2 and Ext. W-2/2 were issued after the work were performed, their being confirmatory orders. He admitted that the Contractor was engaged on afforestation and horticultural work. He further stated that the Contractor used to record the attendance of his workers, hence the record of attendance was not available with the management. During cross-examination, in answer to another question he admitted that the management used to pay the Contractor for supervisory job also. He denied that the Contractor for supervisory job also. He denied that the Contractor was a labour contractor also.

29. That the aforesaid Contractor was sometime also asked to supervise the work is clear from Ext. W-2 which stipulated that the Contractor would be paid supervisory charges @ 10 per cent over the rate of daily wages of the workers. This condition in Ext. W-2 belies the contention of the concerned workmen that they were so supervised only by the official of the management.

30. The learned lawyer for the workmen has built up his case on the basis of documents including Ext. W-2 series. The learned lawyer argued that these letters issued by the management showed that the concerned Contractor was asked to supply certain number of labours for a particular period for which the contractor was to be paid on particular given rate. It was submitted that therefore the work of the contractor finished as soon as he supplied the labour and he had got nothing to do thereafter with the working of those workmen who therefore, worked under the supervision of the management.

32. But the four such letters in Exts. W-2 series make it clear that the management was to pay the wages so fixed not to the workmen directly, but to the concerned contractor. For example, language in any of these four letters may be taken such as in Ext. W-2/1 which runs as follows :—

"You will be paid @ Rs. 11.89 (Rupees eleven and paise eighty nine only) per day per head."

Therefore, if according to these documents produced by the workmen the management had promised to pay the amount of wages of the workmen to the Contractor, then it is difficult to put reliance upon the claim of the workmen that it was the official of the management who used to pay them wages and who took receipt from them. No doubt, even in the case of a Contractor, a management representative was supposed to be present at the time the contract labours were being paid their wages by the Contractor or his representative. But being present in different to making payments directly. These four letters do not depict same amount of wages to the workmen because Ext. W-2/2 the rate of daily payments was Rs. 68.75.

33. None of the three witnesses of the workmen have said in their deposition that they were getting the implements for their work from the management. Moreover, WW-1 and WW-3 have admitted that the management had also employed other permanent malies. The learned Counsel for the sponsoring Union has laid much stress on Ext. W-2/3. This appears to be a copy of the file noting in the office of the management relating to sanction of amount to pay 20 labours from 1-11-1983 to 30-4-84 for doing plantation work and maintenance of garden. In this note the first is that of the Dy. Manager (Administration) which speaks thus :

"Engagement of contract labour (Twenty nos.) could have been avoided by engaging permanent workers as suggested by D/P on page 30N (para-3) but because of management division (deal decision) regarding not to deploy permanent workers we have to carry out plantation work and maintenance of garden in Guest House and for this casual workers have been engaged. As soon as departmental manpower will be provided the present work will be terminated."

34. It appears that ultimately approval for six months was given.

35. First of all there is no evidence on the record to show that this order relates to the present workers. No doubt, the period relates to the one mentioned in Ext. W-2, yet on this score alone it is difficult to connect this document with the present workmen in absence of other connection evidence. This is particularly so because according to the evidence of the sponsoring Union, the concerned workmen were employed at a number of places the description of which the witnesses have given, but this document mentions only plantation work and maintenance of garden in Guest House alone. WW-1 mentions their working also in the C.M.D. bungalow, five bungalows of Directors, in the hospital and in Koyla Bhavan.

36. WW-3 says about the working of some of the concerned workmen in the hospital. Therefore, it is difficult to connect this document with all the present workmen. Moreover, it appears that Ex. W-2/3 has not been properly proved. From the evidence of MW-1, Sri C. P. Singh, it appears that he identified four letters issued to the Contractor, Om

Prakash which were ordered to be marked Exts. W-2 to W-2/4. While other exhibits in the series are the letters issued to the Contractor, Ext. W-2/3 is not at all a letter but a typed copy of some nothings from some file. This document has not been proved as such. Therefore for this reason also it is difficult to place reliance upon Ext. W-2/3.

37. The learned lawyer has pointed to the evidence of WW-1 where, during cross-examination, the witness said that some of the concerned persons whom he had referred to earlier were working under the Contractor. The learned lawyer has pointed that later the witness had said that the concerned workmen were working under the Contractor for horticultural work. But immediately thereafter this witness, it appears, had corrected himself and said that some of the concerned workmen were so working.

38. In any view of the matter the case of the sponsoring Union is that the concerned workmen were employed directly by the management. The sponsoring Union has suggested to MW-1 that the concerned workmen were the employees of M/s. B.C.C. Ltd. In view of such specific case the sponsoring Union can hardly be allowed to make substitution in its case by claiming that a Contractor had supplied these labours to the management.

39. From MW-2 it has been taken in cross-examination that the management used to pay the Contractor for supervision work which he used to do. If the Contractor was only a labour supplier then there was hardly any occasion to mention in Ext. W-2 that he would also be paid supervisory charges.

40. Under these circumstances it is difficult for me to accept these 20 workmen were employed by the management for doing the work of mali and they were being paid directly by the management.

41. Supposing for a moment that these workmen were employed through a Contractor, will that make the workmen the employees of the management with an existing relationship of employer and employee? For this the learned lawyer for the workmen has relied upon a decision reported in 1978 (II) LLJ 397(SC) (Hussainbhai Vs. The Alath Factory Tezhilali Union and others) and submitted that if it was proved that they had worked as malis for the period they claimed and were paid by the management, mere presence of a contractor would not make them contract labour. The learned Counsel also relied upon another decision reported in 1963 (II) LLJ 436(SC) (between J. K. Cotton Supreme and Weaving Mills Co. Ltd. and Labour Appellate Tribunal of India & others) wherein it was held that under the condition of that case the malis had to be defined as workmen. But the facts in that case were different to this one. There admittedly the workmen were working as malis in the bungalows of the officers and Directors of the company and that companies were paying salaries to the malis, recovering mere 22 per cent of their salary from the concerned officers. The names of those malis were borne on a Register maintained by the Clerk of the management who also supervised their work and noted their attendance. They were also liable to be dismissed by the management. But in this case nothing in those lines has been proved.

42. The ratio of the decision in Hussainbhai case (supra) will not apply in this case. In that the work done by the workmen was integral part of the industry concerned, raw materials were supplied by the management including the equipments and the workmen were broadly under the control of the management.

43. In the present case it has not been proved that all these workmen were employed either directly by the management or through a Contractor. No doubt WW-1 has said that some of the workmen had worked under the Contractor, but there is no identification of these workmen in his evidence or elsewhere. Evidence of WW-1 and WW-3 does not show that they had worked through a Contractor. Even then their evidence is not supporting about the working pattern of all the concerned workmen because their evidence also includes that of WW-2, whose case definitely stood on somewhat different footing.

44. Simply because the worker is a contract labour will not entitle him for regularisation of his service unless certain conditions are fulfilled. The contract system for employing

the workmen is not illegal. It is now established that the Contract Labour (Regulation & Abolition) Act, 1970 does not declare that all the contracts are ipso facto illegal since the contract system of employing labour can be abolished only by application of law as provided therein. Therefore, simply because one has worked under a contractor will not ipso facto established direct relationship of employer and employee between the principal employer and the contract labour. Therefore, from the evidence that has been brought on the record I do not find that the sponsoring Union has proved either that the concerned workmen were employed directly by the management to work as mali in which capacity they worked continuously for years, or that they were so employed after having been supplied, simpliciter, by the contractor to the management.

45. Moreover, the management's witness has said that 43 malis are already working and there is no such vacancy. No doubt that Union's evidence has said that vacancies were existing but it has not said the number of vacancies or the number of malis regularly appointed. But the evidence adduced by the Union admits that regular malis were also working. This way on this point the evidence of the witnesses of the management appears to be more acceptable.

46. In view of the aforesaid it cannot be held that the demand of the sponsoring Union is justified.

47. Therefore, the following award is rendered—The demand of the sponsoring Union that the services of 20 concerned workmen should be regularised with effect from the year 1985 is not justified.

In the circumstances of the case there will be no order as to the cost.

P. K. SINHA, Presiding Officer

नई दिल्ली, 15 जून, 1994

का. घा. 1570—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार, मे. सेंट्रल कोलफील्ड्स लिमिटेड, के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, (सं. 2) घनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-6-94 को प्राप्त हुआ था।

[संख्या एल-20012/206/90-घाई धार (कोल-I)]

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 15th June, 1994

S.O. 1570.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. 27, Dhanbad as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Central Coalfield Ltd. and their workmen, which was received by the Central Government on 14-6-94.

[No. L-20012/206/90-IR (Coal-I)]
C. GANGADHARAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Present :

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947.

REFERENCE NO. 39 OF 1991

Parties :

Employers in relation to the management of Central Coalfields Ltd. & their workmen.

Appearances :

On behalf of the workmen : Shri D. Mukherjee, Advocate.

On behalf of the employers : Shri R. S. Murthy, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dated, Dhanbad, the 7th June, 1994

AWARD

The Govt. of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/(206)/90-I.R. (Coal-I), dated, the 1st February, 1991.

THE SCHEDULE

"Whether the action of the Central Coalfields management in not retiring Shri A. B. Goswami immediately after he was declared unfit by the Medical Board held on 25-8-84 and employing him till the date of his retirement and not giving employment to his dependant as provided under para 9.4.3 of NCWA-III is justified? If not, to what relief the workman is entitled?"

2. The action of the management of CCL has been challenged in not retiring Shri A. B. Goswami immediately after he was declared unfit by the medical board held on 25-8-84 and employing him till the date of his retirement and not giving employment to his dependant as provided under para 9.4.3 of NCWA-III.

3. The concerned workman is admittedly a Sr. Overman who was medically declared unfit on 25-8-84. He was stated to have represented before the management for employment of his dependant as per provision of NCWA-III but the management did not pay any heed to his request. The management neither provided employment to the dependant of the concerned workman nor communicated any order stating reasons for not providing employment to the dependant of the concerned workman. Ultimately the concerned workman raised industrial dispute giving rise to the present reference.

4. The management submitted W. S. denying the claim of the concerned workman. It was stated that the concerned workman was working as Sr. Overman in Karkatta Colliery of CCI falling within the jurisdiction of North Karanpura Area of the Company. The area is headed by the General Manager.

5. Admittedly, the concerned workman had applied for the benefit under para 9.4.3 on the medical ground and after that he was medically examined by the Medical Board. His case was also referred to the head office of the company for consideration and decision. It was stated that the approval of the competent authority was not given in the case of Shri A. B. Goswami for his retirement on medical ground and he retired in normal course after serving his full term of employment upto the age of superannuation. The management submitted that no workman can claim as a matter of right that his dependant should be employed on the ground of his not being fit for continued employment on medical ground. The company itself through its competent authority has to be satisfied before any such benefit is given to any workman. While giving parawise reply to the W. S. of the concerned workman it was stated that the benefit of NCWA-III was not meant to cover the cases of workmen who are at the fag end of their service carrier. It was also stated that Shri Goswami was kept informed of the decision all along. On these grounds it was submitted that the concerned workman has got no case and not entitled to any relief.

6. The question for consideration would be as to whether the concerned workman was entitled for the benefit of the provision under para 9.4.3 of NCWA-III?

7. Shri A. B. Goswami the concerned workman was demanding employment of his dependant son under the provision 1491 GI/94—5

sion of NCWA-III after he was declared medically unfit for the work. It is an admitted position that he was declared medically unfit on 25-8-84. The service register (Ext. M-1) shows that he was born on 20-11-24. Naturally he was to retire on 20-11-84 after completion of 60 years of age. Thus he was declared medically unfit only a few months before his retirement. Shri Goswami has stated that he had applied for his medical examination also in the year 1983 but we have no proof to prove this fact. Anyway it is true that he was found medically unfit for the work in the year 1984. The management claims that the benefit of para 9.4.3 on NCWA-III was not meant to cover the cases of workmen who are at the fag end of their service carrier. It was also stated that Shri Goswami was kept informed of the position all along. I think such contention cannot be given its due appreciation for it has got no legal sanction. The provision of para 9.4.3 of NCWA-III is crystal clear and it does not provide any saving clause that the case of the workmen who have arrived at the fag end of service shall not be considered. The relevant provision may be reproduced as follows :—

"9.4.3 Employment to one dependant of a worker who is permanently disabled in his place.

- (i) The disablement of the worker concerned should arise from injury or disease be of a permanent nature resulting into loss of employment and it should be so certified by the Coal Company concerned.
- (ii) The dependant to be considered for employment should be physically fit and suitable for employment and aged below 35 years provided that the age limit shall not apply in the case of spouse."

8. However, in order to meet such unfounded assertion of the management the concerned workman had called for the appointment letter dt. 26-8-93 whereby one Shri Ajay Singh son of Shri S. Ram was given employment under the aforesaid provision. Shri Sahadeo Ram was declared medically unfit on 6-6-83 and his date of superannuation was 10-6-83. This fact has been stated by the concerned workman in his evidence also. The management did not furnish the appointment letter of Shri Ajay Singh nor any reply was given controverting that there was no such employment. Of course a suggestion has been thrown to the concerned workman in his cross-examination that his evidence regarding employment of dependant of Sahadeo Ram was false. The suggestion has been denied. Be that as it may, the provision of NCWA-III is conspicuously silent on the point that there will be no employment of the dependant son of those employees who have reached at the fag end of their service carrier. Naturally all the cases have to be considered irrespective of the stage of service of an individual employee. The only condition is that he must be declared medically unfit. In the instant case the concerned workman was declared medically unfit on 25-8-84.

9. MW-1 Shri Ram Nath Singh is a retired Dy. Chief Personnel Manager of CCL. He stated that the concerned workman was medically examined on 25-8-84. He was one of the member of the medical board also. He stated that after medical examination the case of the concerned workman was referred to the Director, Ranchi but he did not get any sanction of the authority regarding retirement of the concerned workman and employment of his dependant son. The question is as to who was at fault if no sanction order was received. If no sanction for employment of dependant son was given then there must be some cogent reason and the concerned workman was expected to have been conveyed about it. The management asserted that Shri Goswami was made known about the decision but we have no document to appreciate this fact. Of course, Ext. M-2 is the photo copy of the office order dt. 25-10-84 whereby the concerned workman was forewarned that he will be retiring with effect from 20-11-84 from service of the company. This type of the order is passed and conveyed to all the employees immediately before their retirement. It does not state as to why the dependant son of the concerned workman was not given employment under the provision of NCWA-III. Ext. M-3 also disbelieved the contention of the management that the office order (Ext. M-2) was a communication to the concerned workman about the decision taken by the management. Ext. M-3 is the decision taken by the Dy. P. M., Division I Ranchi whereunder the concerned workman was denied the benefit of clause 9.4.3 of NCWA-III. It is dated 11-3-85. When the decision itself was taken on 11-3-85 the question does not arise that the concer-

ned workman could have been informed on 25-10-84 about any such decision.

10. Now let us have a complete view of Ext. M-3. This was the decision dated 11-3-85 taken by the Dy. P. M. (Division I) Ranchi conveyed to the Personnel Manager, Dakra vide letter No. Dy. CPM/DI/85/X 129 dated 11-3-85. The gist of the decision was that since the concerned workman and others worked upto the last date of their superannuation, they have no claim over retirement under clause 9.4.3 of NCWA-III. This decision was again conveyed by the Personnel Manager, Dakra to the Project Officer, Karkatta colliery vide letter dt. 12-4-85 i.e. after one month of the decision taken by the competent authority. Now the question arises as to whether the concerned workman worked till last date of his retirement and if so whether he worked willingly? Definitely he was declared medically unfit on 25-8-84 and it was known to all concern. This means he was not fit for work after 25-8-84 and in the situation he was not expected to work satisfactorily nor it was lawful for the management to take any work from him. The concerned workman should have been asked to have abstain from duty for he had already been declared medically unfit for the duty. Actually the concerned workman was left with no option. He could not have suo moto left the work. In the absence of any instructions he was expected to attend his duty which he had been doing at the risk of his health. The concerned workman stated that he had been going to his work place but he was asked not to do his duty. In this connection we have no documentary proof but some reliance can be placed upon Ext. W-1 which is the photo copy of the attendance position of Shri Goswami. This will show that Shri Goswami worked for a very few days after he was medically declared unfit. On most of the days he remained either on C. L. or S. L. For sometime he was given light duty also. This is suggestive of the fact that the concerned workman was in capable to discharge his duties. In reply to a question the concerned workman answered that his Overman certificate was valid till his retirement. He also stated that till the validity of Overman certificate the workman is entitled to work. Here it may be mentioned that entitlement is a quite different thing. One claims entitlement of work if he is physically capable to discharge his duties. Here in the present case the question of entitlement does not arise at all.

11. The concerned workman was found medically unfit on 25-8-84 but the decision was taken at the head office on 11-3-85. This means it took more than 6 months time. This cannot be the fault of the concerned workman.

12. Ext. W-2 is the photo copy of the letter addressed to the Project Officer, Karkatta Colliery by the Personnel Manager, Dakra. It contains also the list of candidates for interview on 12-9-84. From the letter it appears that the employees as per list annexed were medically examined and were found unfit to continue in the service of the company. The employees concerned requested for appointment of their dependants in the service of the company. The addressees were requested to direct the dependants to appear for interview before the committee for assessment of their suitability on 12-9-84 at G.M.'s Office at Dokra. The list also contains the name of Shri A. B. Goswami and his dependant son Shri Sanjoy Kumar Goswami. This is suggestive of the fact that Shri Sanjoy Kumar Goswami was called for interview to examine his suitability for employment. Prima facie I find no reason to disbelieve this document.

13. I have examined various aspects of the matter and it appears that the concerned workman was entitled for the benefit of para 9.4.3 under the provision of NCWA-III. In the circumstances, the action of the management in not retiring the concerned workman immediately after he was declared unfit by the medical board held on 25-8-84 and employ him till the date of his retirement and not providing employment to his dependant son was not justified at all. The management is thus directed to give employment to the dependant son of the concerned workman within three months time from the date of publication of the Award.

This is my Award.

B. RAM, Presiding Officer

नई दिल्ली, 15 जून, 1994

का. आ. 1571—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार, मै. भारत कोकिंग कोल लिमि. का सिजुआ क्षेत्र के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निश्चित औद्योगिक विवाद में उप मुख्य श्रमायुक्त (केन्द्रीय), धनबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को प्राप्त हुआ था।

[(संख्य-एल-20025/32/92-आई आर (कोल-I)]

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 15th June, 1994

S.O. 1571.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Dy Chief Labour Commissioner (Central), Dhanbad as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Sijua Area of M/s. BCCL and their workmen, which was received by the Central Government.

[No. L-20025/32/92-IR (Coal-I)]

C. GANGADHARAN, Desk Officer

ANNEXURE

BEFORE THE ARBITRATOR, SHRI S. K. MUKHOPADHYAY, DEPUTY CHIEF LABOUR COMMISSIONER (CENTRAL), DHANBAD.

In the matter of Arbitration under Section 10-A of the Industrial Disputes Act, 1947.

ARBITRATION CASE NO. 1 OF 1992

PARTIES :

Employers in relation to the management of Bharat Coking Coal Limited, Sijua Area and Shri Ravi Choubey, dependent of Late Om Narayan Pandey of Sendra Bansjora Colliery of Sijua Area.

PRESENT :

Shri S. K. Mukhopadhyay, Arbitrator.

APPEARANCES :

On behalf of the employers : Shri S. K. Singh, Personnel Manager, Sijua Area, Bharat Coking Coal Ltd.

On behalf of the workmen : 1. Shri O. P. Lall, Joint General Secretary, Rashtriya Colliery Mazdoor Sangh.

2. Shri G. G. Ghosh, Authorised representative Rashtriya Colliery Mazdoor Sangh.

STATE : Bihar

INDUSTRY : Coal

Dated, Dhanbad, the 19th April, 1994

AWARD

The Government of India, Ministry of Labour, in exercise of the power conferred on them under Section 10-A of the Industrial Disputes Act, 1947, published the Arbitration Agreement on the following dispute for arbitration by me vide Order No. L-20025(32)/92 IR (COAL-I) dt. 13-10-92 :

"Whether refusal of giving employment to Shri Ravi Choubey as a dependent of Late Om Narayan Pandey of Sendra Bansjora Colliery is justified ? If not to what relief he is entitled ?"

The case of the management of Bharat Coking Coal Limited, Sijua Area (hereinafter referred to as management) as disclosed in the Written Statement and Rejoinder, details apart, is as follows :—

That Shri Om Narayan Pandey was appointed as Electric Fitter on 17-10-1971 and he expired on 10-12-89. As he was a bachelor he did not acquire any family member during his life time and nomi-

nated Shri Ravi Choubey for getting the C.M.P.F. and gratuity due to him in the event of his death before receiving the amount himself.

That after the death of Shri Om Narayan Pandey, the concerned person Shri Ravi Choubey declared himself as an adopted son of Late Om Narayan Pandey and claimed employment for himself. That it has been submitted on behalf of the management that as per National Coal Wage Agreement, a dependent in this case must be legally adopted son of the deceased workman and the adoption should have taken place at an early age and a document by adoption deed must exist.

That Shri Om Narayan Pandey did not declare the concerned person as his adopted son in any of the documents maintained by the management during the life time of Late Om Narayan Pandey. Therefore, according to the management the claim of Sh. Ravi Choubey that he was the adopted son of Late Om Narayan Pandey is based on after thought only. That the concerned person failed to produce any authenticated documents to establish that he was adopted by Sh. Om Narayan Pandey as his son during his life time. Therefore, according to the management the claim of the concerned person is without any merit and he is not entitled to employment or any relief.

That the concerned person got an adoption deed fabricated with the help of mother of Late Om Narayan Pandey after his death. It has been submitted on behalf of the management that the so called adoption deed prepared by a person having no authority to do so in favour of a person who is above 16 years, is void.

The case of the workman, as disclosed in the Written Statement, briefly stated is as follows :—

That during his life time Late Om Narayan Pandey was unmarried. He adopted Shri Ravi Choubey as his son and successor with effect from 8-10-1973. That after the death of Shri Om Narayan Pandey, the son, Shri Ravi Choubey submitted petition before the management alongwith all relevant documents in support of his claim for employment as per National Coal Wage Agreement vide his petition dt. 6-3-90. That having received no response from the management the matter was raised before the management and it was decided to examine the matter for necessary action. Later on the management expressed its inability to provide employment to the son of Late Om Narayan Pandey without assigning any reason.

That Shri Ravi Choubey is a nominee of Late Om Narayan Pandey in the C.M.P.F. declaration form 'A' as well as in the service Excerpts. According to the workman that in spite of the above documents available with the local management in respect of Shri Ravi Choubey, the action of the management in denying employment as per National Coal Wage Agreement, is not justified.

The management in order to support its action has examined one Shri Gopal Prasad, Clerk of Personnel Department, Sijua Area, F.W.1 He exhibited a copy of letter dt. 6/7-1-92 of G.M. (Personnel), Bharat Coking Coal Limited addressed to G. M. Sijua Area, BCCL, Ex. E.1. He submitted that the application of Shri Ravi Choubey was rejected by the General Manager (Personnel) on the ground that Shri Om Narayan Pandey was not married and as such the question of his having adopted son did not arise. In course of cross-examination he stated that a format known as Service Excerpts was introduced in 1986 for all the workmen and it was treated as final authenticated document for all purposes. He has also deposed on oath that service excerpts were prepared at colliery level by the incumbent in duplicate. One copy is kept in the colliery and the other copy is given to the workman. He identified the copy of service excerpts meant for Shri Om Narayan Pandey (Ex. W.1) and admitted that in the column relating to son, the name of Sh. Ravi Choubey, 18, has been entered. He further submitted that the General Manager (Personnel) mentioned that except mothers' name no entry was made in the register due to the fact that Service Excerpts were not sent to the Hqs. He could not, however, say whether Ravi Choubey would have been considered for employment had his service excerpts been sent to BCCL Hqs. He also identified Ex. W.2, xerox copy of original family details of Late

Om Narayan Pandey. The family details showed that the name of Ravi Choubey had been entered as adopted son.

The management also examined one Shri Amit Bhushan, son of Late Anant Bihari Bhushan (Ex. W.2). He exhibited the Service Excerpts of Shri Shrikant Choubey, Sanitary Inspector of Sijua Bansjora Colliery and the natural father of Shri Ravi Choubey. The name of Shri Ravi Choubey appears as one of the dependant son in the service excerpts of Sh. Shrikant Choubey.

One Smt. Moti Devi, mother of Late Om Narayan Pandey was examined on behalf of the workman. Smt. Moti Devi deposed on oath that Shri Om Narayan Pandey adopted Sh. Ravi Choubey as his son when Sh. Ravi Choubey was eight years old as per Hindu rituals and rites. She submitted that she used to live with Shri Om Narayan Pandey and Shri Ravi Choubey. She further stated that after the death of Sh. Om Narayan Pandey, Shri Ravi Choubey was adopted by Smt. Moti Devi.

Shri Dina Nath Pandey, brother of Shri Om Narayan Pandey (W.W.2), stated that Shri Om Narayan Pandey adopted Ravi Choubey as his son some time in 1973 when Ravi was nearly eight years old. After adoption Ravi started living with Sh. Om Narayan Pandey and his mother Smt. Moti Devi. After the death of Shri Om Narayan Pandey, Smt. Moti Devi also adopted Shri Ravi Choubey.

Shri Om Narayan Pandey, elder brother of Late Om Narayan Pandey (W.W. 3), Deposed on oath that Shri Om Narayan Pandey adopted Ravi Choubey during his life time when Ravi was a boy according to Hindu rituals and rites in his presence. He further submitted that Smt. Moti Devi, mother of the deceased employee lived with Ravi Choubey and Ravi Choubey performed Shradh and all religious rites as a son after the death of Sh. Om Narayan Pandey.

The contention of the management that as Shri Om Narayan Pandey, workman, did not declare the concerned person as his adopted son in any of the documents maintained by the management during his life time, the claim of Shri Ravi Choubey that he was adopted by Om Narayan Pandey as a son was based on after thought, is not correct because Shri Gopal Prasad, Clerk of the Personnel Department examined on behalf of the management (E.W.1) admitted that in the service excerpts of Om Narayan Pandey maintained by the Management, Ex. W.1, the name of Ravi Choubey was entered in the column relating to the son. He also admitted that the Service Excerpts of Late Om Narayan Pandey was not forwarded to the Hqs. by the colliery. He exhibited a copy of letter dt. 6/7-1-92 of G.M. (P), BCCL addressed to G. M., Sijua Area, Ex. E.1., wherein it has been mentioned that the application of Shri Ravi Choubey for employment was rejected on the ground that Om Narayan Pandey was not married and as such the question of adopted son did not arise. The ground adduced by the management for refusing employment to Shri Ravi Choubey does not appear to be convincing as Section 7 of the Hindu Adoption and Maintenance Act, 1956, lays down that any male Hindu who is of sound mind and is not a minor has a capacity to take a son or a daughter in adoption.

It is admitted by the parties and not disputed that Shri Ravi Choubey received all the terminal benefits due to Late Om Narayan Pandey such as C.M.P.F. dues, gratuity as his nominee. The deposition of three witnesses examined on behalf of Shri Ravi Choubey that he lived with the workman, Shri Om Narayan Pandey as his dependant and that Ravi Choubey was adopted by Shri Om Narayan Pandey as his son when he was eight years old after performing Hindu rituals and rites, remained unassailed. They have also deposed on oath that Ravi Choubey performed the Mukhagni & Shradh of Shri Om Narayan Pandey. The fact that the natural father of Shri Ravi Choubey had chosen to mention Ravi Choubey as his family member to his employer does not establish that Ravi Choubey was not the adopted son and dependant of the workman, Late Om Narayan Pandey.

However, I feel inclined to the views of the management that the adoption of Shri Ravi Choubey by Smt. Moti Devi was not valid as it was not in accordance with the provisions of Section 10(ii), (iv) and Section 11(i) of the Hindu Adoption and Maintenance Act, 1956. As per Section 10(ii) & (iv) of the aforesaid Act Shri Ravi Choubey was not capable of being taken in adoption by Smt. Moti Devi as he was al-

readily adopted by Shri Om Narayan Pandey and he had completed the age of 15 years and the workman could not establish that there was a custom or usage which permitted the adoption even after completion of 15 years of age. Section 11(i) lays down the conditions for a valid adoption that the adoptive mother by whom the adoption is made must not have a Hindu Son, Son's Son or Son's Son's Son. As per the evidence on record Smt. Moti Devi had several sons and son's sons.

After going through the oral evidence and the exhibits on record it is evident that Shri Ravi Choubey lived with Shri Om Narayan Pandey as his adopted son and dependant. 9.4.2. of National Coal Wage Agreement-IV provides employment of one dependant of the worker who dies while in service. 9.4.2.(i) of National Coal Wage Agreement reads as follows :—

"The dependant for this purpose means the wife/husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, younger brother, widowed daughter/widowed daughter-in-law or son-in-law residing with the deceased may be considered to be the dependants of the deceased".

Considering all these facts and circumstances I came to the conclusion that Sh. Ravi Choubey is entitled to the employment as per 9.4.2. of National Coal Wage Agreement-IV as dependant of deceased workman, Shri Om Narayan Pandey. The management of M/s. Bharat Coking Coal Limited is directed to give employment to Shri Ravi Choubey within one month from the date of publication of this Award.

Accordingly, the following Award is rendered :—

"The refusal of giving employment to Shri Ravi Choubey as a dependant of Late Om Narayan Pandey of Sendra Bansiora Colliery is not justified. The management is directed to give him employment within one month from the date of publication of this Award."

This is my Award.

S. K. MUKHOPADHYAY, Arbitrator and
Dy. Chief Labour Commissioner (C), Dhanbad.

नई दिल्ली, 16 जून, 1994

का. धा. 1572—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, सेंट्रल कोलफील्ड्स लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2), धनबाद के पंचपट कत प्रकाशित करती है, जो केन्द्रीय सरकार को 15-6-99 को प्राप्त हुआ था।

[संख्या-एल-20012/207/90-आई धा (कोल-I)]

टी. गंगाधरन, ई.ए. अधिकारी

New Delhi, the 16th June, 1994

S.O. 1572.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employees in relation to the management of Central Coalfields Ltd. and their workmen, which was received by the Central Government on 15-6-1994.

[No. L-20012/207/90-IR (Coal-I)]
C. GANGADHARAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d)
of the I. D. Act, 1947
Reference No. 40 of 1991

PARTIES :

Employers in relation to the management of Central Coalfields Ltd. and their workmen.

APPEARANCES :

On behalf of the workmen—Shri D. Mukherjee, Advocate

On behalf of the employers—Shri R. S. Murthy, Advocate

STATE : Bihar

INDUSTRY : Coal

Dhanbad, the 9th June, 1994

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/207/90-IR (Coal-I), dated, 15th February, 1991.

SCHEDULE

"Whether the action of the Central Coalfields management not retiring Shri M. Pramanik immediately after he was declared unfit by the Medical Board held on 25-8-84 and employing him till the date of his retirement and not giving employment to his dependant as provided under para 9.4.3 of NCWA-III is justified? If not, to what relief the workman is entitled?"

2. In the present reference the action of the management has been challenged in not retiring Shri M. Pramanik immediately he was declared unfit by the Medical Board held on 25-8-84 and employing him till the date of his retirement and not giving employment to his dependant as provided under para 9.4.3 of NCWA-III.

3. Admittedly, the concerned workman namely Shri M. Pramanik was working as Sr. Overman at K.D.A. Project of M/s. CCL.

4. The concerned workman represented before the management several times praying for his examination by the Medical Board for he was feeling difficulty in discharging of his normal duty. However, after repeated prayer the management referred him to the medical board and ultimately the Board found him medical unfit for the job. The concerned workman approached the management for the benefit of employment to the dependant son under the provisions of NCWA-III. But the management did not offer any employment for the reasons based known to it. It was also stated that the management did not pass any speaking order nor it was communicated to the concerned workman denying such benefit to the concerned workman.

5. The workman after having found no remedy at the door of the management raised industrial dispute before the ALC (C), Ranchi which ended in failure giving rise to the present reference. It has been prayed that the management be directed to provide employment to the dependant son of the concerned workman with retrospective effect.

6. The management filed separate W.S. denying the claim of the concerned workman. It was admitted that Shri M. Pramanik was working as Sr. Overman and his date of birth as per record was 5-11-24. He retired on 5-11-84 after completing 60 years of age and without any loss of employment whatsoever.

7. Admittedly, Shri Pramanik had applied for retirement from the service of the management on medical grounds and had expressed desire for providing employment to his dependant. He was accordingly medically examined on 5-8-84 and his case was submitted to the head office of the company for final decision. According to the management it takes sometimes for a final decision to be taken by the head office. However, the concerned workman attained the age of superannuation before any decision could be received from the head office and during this period he continued to serve the company and was superannuated in the normal course with effect from 5-11-84. It was contended that absolutely there was no loss of employment in his case and in the circumstances there was no question of his being given any benefit under para 4.9.3 of NCWA-III.

8. While giving parawise reply to the W.S. of the workmen it was contended that the benefit of para 9.4.3 is not meant to be given to any workman the day end of his service. The management was also not required to issue any speaking order as claimed by the concerned workman.

9. In view of such pleadings the question for consideration would be as to whether the concerned workman is entitled for the benefit under para 9.4.3 of NCWA-III as claimed by him.

10. Shri Pramanik the concerned workman is demanding employment of his dependant son after he was declared medically unfit. It is admitted case of the parties that Shri Pramanik was declared medically unfit for the job on 25-8-84 for he was suffering from occupational disease like T.B. The service register (J.L. M-2) shows that he was born on 5-11-24. He retired on 5-11-1984 after completion of 60 years of age. This means he was declared medically unfit only a few months before his retirement. The concerned workman while deposing as WW-1 stated that in the year 1983 itself he had filed three applications requesting the management to get him medically examined for he was suffering from T.B. and lastly he was examined on 25-8-84. This part of the statement has not been controverted during the cross-examination and this will lead to conclude that the management sat over the matter for about a year and lastly he was referred for his medical examination on 25-8-84.

11. While giving parawise reply to the W.S. of the workmen the management asserted that the benefit of para 9.4.3 of NCWA-III was not meant to cover the case of workmen who have reached at the lag end of their service. I think this assertion cannot be appreciated for it has got no leg to stand upon. The relevant provision of para 9.4.3 of NCWA-III may be reproduced as follows:—

“9.4.3 Employment to one dependant of a worker who is permanently disabled in his place.

(i) The disablement of the worker concerned should arise from injury or disease be of a permanent nature resulting into loss of employment and it should be so certified by the Coal Company concerned.

(ii) The dependant to be considered for employment should be physically fit and suitable for employment and aged below 35 years provided that the age limit shall not apply in the case of spouse.”

12. The provision aforesaid is crystal clear that the dependant of an employee declared medically unfit will be provided employment provided he fulfills certain conditions. It does not lay down that this benefit is not to be extended to those who had reached at the lag end of his service career. The question arises as to who can be held responsible for his delay. In contravention the concerned workman had applied for his medical examination in the year 1983 but he was put to the test after about a year. The concerned workman cannot be held responsible for any such delay. Actually he should have been immediately examined in the year 1983 itself and the matter for employment of his dependant son should have been processed accordingly.

13. The main contention of the management as discussed in the W.S. was that there was no loss of employment of the concerned workman who worked till the last and that he was not entitled for the benefit as stated above. MW-1 Shri R. N. Singh a retired Dy. Chief Personnel Manager has stated that the medical board declares an employee unfit only when it is found that he is incapable to perform duty. The witness added that the concerned workman was suffering from T.B. and was declared medically unfit on 25-8-84. Naturally he was incapable to do his duty as Overman atleast after 25-8-84 and there was no question of his doing duty thereafter.

14. The concerned workman while deposing as WW-1 stated that he was not assigned any duty after he was declared medically unfit. He stated that the Manager usually asked to mark his attendance and sit without any work. Undisputedly there can be no such order in writing that a workman on account of his ill health will simply mark his attendance without any work. In cross-examination the witness stated that his Overman's certificate was valid till the date of his retirement. In reply to a question he stated that so long the certificate of Overmanship is valid a workman is fit to be employed on duty, provided his health permits. Definitely the health of the concerned workman had already failed and was declared incapable to do any duty. Taking work from the concerned workman, a declared T.B. patient after 25-8-84 was most unlawful and it will be taken

as in human treatment at the hands of the authority concerned. In the circumstances, perhaps the management can not be permitted to plead that there was no loss of employment. Even from the perusal of the Bonus sheet it will appear that the concerned workman worked only for a few days in each month during the last 2 quarters of the year 1984 suggesting that he had already grown weak on account of prolonged disease like T.B. The question of no loss of employment can be appreciated if the workman works willingly with all vigour throughout the month till the date of his superannuation. In the instant case the position is quite different.

15. The concerned workman had no option but to attend his duty in absence of any specific direction from the higher authority. He was given notice of retirement (Ex. M1 on 1-10-84 with a direction to vacate the company's quarters and to collect his dues. This document does not state any reason as to why he was denied the benefit of provision of NCWA-III. MW-1 has stated that the case of the concerned workman for employment of his dependant was sent to the head office, Ranchi but he did not get any approval before he retired after completing 60 years of age. The question of obtaining approval immediately did not arise when the matter has been delayed from the very beginning.

16. The concerned workman claimed that no speaking order was communicated to him stating the reasons for not giving the benefit of employment to his dependant son. According to the management it was not obligatory for the management to convey such order. The assertion of the management, in my opinion, has to be rejected. This benefit of employment to dependant son has been extended which confers a sort of right upon a working employee and when the question of violation of right arises, the authority violating/denying such right must assign reason. The reason as canvassed in the W.S. of the management that there was no loss of employment has already been answered in favour of the workmen.

17. The concerned workman claimed that his dependant son was interviewed but the management did not give any employment. However, MW-1 has denied that the son of Shri Pramanik was ever interviewed. At this stage reference may be made to Ext. W-2 which is the photo copy of the letter addressed to one Shri Joseph by Shri S. K. Verma, Sr. P.O., K.D.A. Project. The contents of the letter states that Shri Pramanik Sr. Overman retired from K.D. Colliery on 5-11-84 and before retirement he had applied for the benefit under para 9.4.3 of NCWA-III. It further states that his dependant son namely his eldest son Shri Joydeb Pramanik was also interviewed by the Area committee but till date he had not received any appointment letter nor he was informed about his case. This letter speaks unequivocally in so many words that the eldest son of Shri Pramanik was interviewed by the Area Committee. Prima facie I find no reason to disbelieve this document.

18. The workman has also referred to a letter addressed to the Project Officers, Karketta Colliery by the Dy. Chief Personnel Manager, Dukra. This letter was filed in Ref. No. 39/91. A copy of the same has also been brought on the record in this reference. It may be read as Ext. W-3. The letter also enclosed a list of the candidate for interview. The Project Officer by the aforesaid letter was requested to direct the dependant to appear for interview before the committee on 12-9-84 for assessment of their suitability. The enclosure indicates the name of Shri Joydeb Pramanik at Sl. No. 25 who was to be directed by the Project Officer for interview before the committee. From these two documents it is crystal clear that the dependant son of the concerned workman has already been interviewed and his suitability for employment was examined.

19. I have examined various aspect of this case and it appears that the concerned workman was suffering from T.B. since long time. He had requested the management for his medical examination in the year 1983 itself but his case was referred in August, 1984. This delay will solely be on account of the laches on the part of the management otherwise the concerned workman would have been examined well in advance having sufficient time for consideration of employment of his dependant son by the higher authority. In the circumstances, I am to hold the view that the dependant son of the concerned workman namely Shri Joydeb

Pramanik should be given employment under para 9.4.3 of NCWA-III. The management is thus directed to comply with the direction within three months from the date of publication of the Award.

B. RAM, Presiding Officer

नई दिल्ली, 24 जून, 1994

का.आ. 1573.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स भारत कोकिंग कोल लिमि. का बुरागढ़ कोलियरी के प्रबन्धन के संबंध नियोजकों और उनके कर्म-कारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. I) धनबाद के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 24-6-94 को प्राप्त हुआ था।

[संख्या एन.-20012/74/91-आई.आर. (कोल-I)]

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 24th June, 1994

S.O. 1573.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. I), Dhanbad as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Burragarh Colliery of Ms. B.C.C.L. and their workmen, which was received by the Central Government on 24th June, 1994.

[No. L-20012/74/91-IR(Coal-I)]
C. GANGADHARAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d)(2-A) of the Industrial Disputes Act, 1947

Reference No. 97 of 1991

PARTIES:

Employers in relation to the management of Burragarh Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen.

PRESENT:

Shri P. K. Sinha, Presiding Officer.

APPEARANCES:

For the Employers—Shri B. Joshi, Advocate.

For the Workmen—Shri B. Lall, Advocate and Shri D. K. Verma, Advocate.

STATE : Bihar. INDUSTRY : Coal.

Dated, the 16th June, 1994

AWARD

By Order No. L-20012/74/91-IR(Coal-I) dated, the 11th October, 1991, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by Clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of Burragarh Colliery of M/s. Bharat Coking Coal Ltd., in dismissing from service Shri Suleman Mian is justified? If not, to what relief is the workman entitled?"

2. The case of the management against the concerned workman, namely, Suleman Mian, as per its written statement is that Suleman Mian was actually Jumai Mian, but at the

time of entering into service he had given out his name as Suleman Mian, and then the management issued a charge-sheet dated 7th/8th September, 1988 for giving false information regarding his name and the name of his father at the time of employment. On denial of the charge by the workman a domestic enquiry was held in which the Enquiry Officer, by his report dated 28th April, 1990, held the concerned workman guilty of aforesaid misconduct. The record of the enquiry and the report of the Enquiry Officer were examined by the competent authorities and the General Manager of the Area had approved the dismissal of the concerned workman as a result of which the workman was dismissed from service by letter dated 21st/24th May, 1990.

3. On the other hand, the workman in his written statement has stated that he was working as Miner/Loader at Burragarh Colliery for a long time. When the charge-sheet was issued alleging that his actual name was Jumai Mian he denied the allegation after which a domestic enquiry was conducted. The workman has termed his dismissal from service on the basis of domestic enquiry to be unjustified. He has claimed his reinstatement with full back wages and other benefits.

4. From the record it appears that on 17th March, 1994 the learned Counsel, for the workman, conceded that the domestic enquiry was held fairly and properly and this Tribunal also held it to be so.

5. Before proceeding further it may be noticed that this dispute appears to have been sponsored by Janta Mazdoor Sangh, but on 22nd June, 1992 the workman filed a petition that since the sponsoring Union was not taking any interest, he was contesting the case himself. This was filed before my learned predecessor and it appears, by implication, that the workman was allowed to be represented through a lawyer of his choice.

6. The points for consideration are, firstly, as to whether or not the conclusion of the Enquiry Officer was correct and fit to be upheld and, if so, whether the punishment was adequate in view of the charge proved.

7. Ext. M-5 is the chargesheet issued against the workman stating therein that his actual name was Jumai Mian S/o Jahur Mian whereas he had entered into service in the name of Suleman Mia S/o Jahur Mia which constituted misconduct under Clause 17(i)(a) and 17(i)(o) of the Model Standing Orders.

8. From the records of the domestic enquiry it appears that one Sri C. K. Pandey was appointed as the management representative for placing the case of the management before the Enquiry Officer whose statement was recorded by the Enquiry Officer. In his statement the management representative stated that the actual name of the workman was Jumai Mia S/o Johur Mia of Village Hetampur, P.S. Dhanapur, District Varanasi whereas he had entered into the service in the name of Suleman Mia S/o Johur Mia. He further pointed out a F.I.R. lodged by Officer-in-Charge of Jharia P.S. copy of which is Ext. M-7. It was pointed out that in this F.I.R., dated 20th August, 1988, at page 8, the facts of the case against Suleman Mia were described. He also expressed desire to examine different witnesses including police officers. The management representative appears to have been allowed by the Enquiry Officer to be cross-examined on behalf of the workman who put only one question asking the management representative as to whether the management had any proof other than the F.I.R. to show that he was working in the name of someone else to which Sri Pandey replied that investigation was continuing and whatever witnesses emerged from the investigation, would be examined.

9. The only witness examined by the management was Sri A. K. Lal, the then Agent of Burragarh Colliery who has simply said that Jumai Mia was working in the colliery in the name of Suleman Mia for which he was issued charge-sheet. When he was asked during the cross-examination about basis of his assertion, the witness submitted that averment at page 8 of the F.I.R. 504/88 registered by Inspector of Police of Jharia P.S. proved that the concerned workman was wrongly working as Suleman Mia. When he was asked as to whether there was any other basis except the F.I.R. to claim that the concerned workman was an imposter, the witness answered that it was the job of the Police Department to verify the name and address of a person.

10. It appears that thereafter many adjournments were taken for examining the concerned Police Officer, but it appears that the management's representative could not procure attendance of any other witness including the concerned Police Officer, hence by order dated 20th December, 1989 the Enquiry Officer called upon the workman to adduce his evidence. The workman examined himself in which he asserted that he was Suleman Mia S/o Johur Mia of Village Hetampur, P.S. Dhanapur, District Varanasi. He denied that he was impersonating one Jumai Mia. During cross-examination he gave description of other family members. He answered in affirmative when he was asked as to whether he could produce an attested photograph from some official of his native place giving out his name, father's name and address. However, it was for the management to prove its allegation rather than the workman to prove his innocence, the management not first having discharged its onus.

11. It also appears that copy of register in Form 'B' was produced by the management before the Enquiry Officer who copied the contents of page 61 relating to the concerned workman in which his name, parentage and address was the same as claimed by the concerned workman in his evidence. The Enquiry Officer also noted that the photograph of the concerned workman in the register was signed over by the Welfare Officer, Sri J. D. Pandey with his stamp.

12. This is how the management's evidence stands on the record on basis of which the Enquiry Officer found the charges to have been proved and the General Manager having approved the finding of the Enquiry Officer, that resulted in dismissal of the concerned workman.

13. It is clear from the record that the only evidence that the management could produce before the Enquiry Officer was an F.I.R. lodged by the Police Officer against 37 persons, including the concerned workman at Sl. No. 26. This allegation in the F.I.R. has been treated by the management as conclusive proof of alleged impersonation by the concerned workman. I am constrained to say that the right from the Enquiry Officer to the General Manager appear blissfully not to have applied their mind over the evidence produced by the management in the enquiry before holding the charge to have been proved.

14. An allegation can never take the form of conclusive proof unless cogent and tangible independent evidence is led, proving the allegation. If the services of the workmen are terminated in this manner then no workman could feel safe because the management may be prone to consider an allegation levelled against a workman to be the conclusive proof of his guilt, without any cogent and independent evidence. I myself cannot understand as to why the management took such attitude which only led to the victimisation of the workman.

15. Perhaps the reason of such callous attitude of the management is that they feel that in case their orders are found to be illegal and inoperative, it will be the Organisation with its public money which will be taxed for making payment to, and to compensate, the concerned workmen, and nothing would go out of their pocket. I may say that this Tribunal has come across a few other cases also in which it felt that the Punishing Officer had not at all applied his mind in approving the findings of the Enquiry Officer. It is, therefore, high time that in such cases in which the action of the officials may appear not to be justified from any angle, sometime even bordering malafide, the management should take step to remedy the situation. How this can be done has been shown by their Lordships of Hon'ble Supreme Court in their decision reported in 1993 Lab. J.C. 1943 (Central Co-operative Consumer's Stores Ltd. Vs. Labour Court, H.P. at Simla and another). The management would do well to start following the way shown in the aforesaid decision.

16. I do not find any basis for holding that the charge of misconduct against the workman had been proved by the management's evidence even to some extent. By their such improper action the management has brought miseries to the workman for no fault of his. During the period of his dismissal the workman has been deprived of his earning which was rightfully his but which the management had not to pay him on the ground that the workman stood dismissed from service, however irrationally. In such circumstances I find that the workman is entitled to reinstatement with back wages, as well for costs.

17. The following award, therefore, is rendered—

The action of the management of Burragarh Colliery of M/s. B.C.C. Ltd. in dismissing from service Suleman Mia was unjustified. The workman is entitled to reinstatement in service with full back wages and other benefits that otherwise would have accrued to him during the period of dismissal had he not been so dismissed. The management is directed to reinstate the concerned workman within a month of this award having become enforceable, and to pay the back wages immediately thereafter. The management is also directed to pay to the workman cost of Rs. 1000 (Rupees one thousand).

P. K. SINHA, Presiding Officer

नई दिल्ली, 24 जून, 1994

का. आ. 1574.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार में भारत कोकिंग कोल लिमि. की वेस्ट मुदीडीह कोलियरी के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. I) धनबाद के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 22-6-94 को प्राप्त हुआ था।

[संख्या एल.-20012/100/92—आई.आर. (कोल-I)]

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 24th June, 1994

S.O. 1574.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. I), Dhanbad as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of West Mudidih Colliery of M/s. B.C.C.L. and their workmen, which was received by the Central Government on 22-6-1994.

[No. L-20012/100/92-IR(Coal-I)]
C. GANGADHARAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d)(2-A) of the Industrial Disputes Act, 1947

Reference No. 136 of 1992

PARTIES:

Employers in relation to the management of West Mudidih Colliery of M/s. B. C. C. Ltd.

AND

Their Workmen.

PRESENT:

Shri P. K. Sinha, Presiding Officer.

APPEARANCES:

For the Employers: Shri B. Joshi, Advocate.

For the Workmen: None.

STATE: Bihar.

INDUSTRY: Coal.

Dated, the 14th June, 1994

AWARD

By Order No. L-20012(100)/92-I.R. (Coal-I), dated, the 2nd December, 1992, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of

the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the demand of R.C.M.S. for treating the date of Birth of Shri Moti Mahato of West Mudidih Colliery as 13-1-1950 is justified? If so, to what relief the workmen is entitled?"

2. The order of reference was received in the office of this Tribunal on 15-12-1992. Despite receipt of notice earlier none had appeared for the sponsoring Union. Again registered notice was sent on 2-2-1994, but none appeared on behalf of the sponsoring Union on 21-3-1994. Thereafter one more chance was given to the sponsoring Union to appear before this Tribunal on 6-6-94 positively failing which order in accordance with law was to be passed. On 6-6-94 also none had appeared on behalf of the sponsoring Union. It appears that the sponsoring Union is not interested in pursuing the case. Hence I am constrained to pass a 'No Dispute Award'.

3. Therefore, I render 'no dispute award' in the present case

P. K. SINHA, Presiding Officer

नई दिल्ली, 24 जून, 1994

का.ग्रा. 1575.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. भारत कोकिंग कोल लिमि. की सालनपुर कोलियरी के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्म-कारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. I) धनबाद के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 22-6-94 को प्राप्त हुआ था।

[संख्या एल. - 20012/280/89-आई.ग्रा. (कोल I)]

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 24th June, 1994

S.O. 1575.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. I), Dhanbad as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Salanpur Colliery of M/s. B.C.C.L. and their workmen, which was received by the Central Government on 22-6-1994.

[No. I-20012/280/89-IR(Coal-I)]
C. GANGADHARAN, Desk Officer
ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d)(2-A) of the Industrial Disputes Act, 1947

Reference No. 27 of 1990

PARTIES:

Employers in relation to the management of Salanpur Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen.

PRESENT:

Shri P. K. Sinha, Presiding Officer.

APPEARANCES:

For the Employers: Shri B. Joshi, Advocate.

For the Workmen: Shri D. Mukherjee, Advocate.

STATE: Bihar.

INDUSTRY: Coal.

Dated, the 15th June, 1994

AWARD

By Order No. I-20012/280/89-IR.(Coal-I), dated, the 12th February, 1990, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the action of the management of BCC Ltd., in relation to Salanpur Colliery in Area No. IV is justified in dismissing the workman Shri Chaturi Dusadh, Miner Loader from service w.e.f. 12-8-88? If not, to what relief he is entitled?"

2. The following charge was communicated to the workman vide letter dated 6-6-88 (Ext. M-1):—

"On verification of the genuineness of your identity on the basis of your permanent home address as stated by you at the time of your appointment, it has been reported that you do not belong to the village of which you have claimed to be a permanent resident. Apparently, you are not the genuine Chaturi Dusadh but you are impersonating the real Chaturi Dusadh. As per report received by BDO, Hazaribagh no certificate of genuineness has been issued from his office and there is no such Village in this Block. It clearly shows that you get your employment on false Identification Certificate.

The aforesaid acts on your part amount to misconduct under the Model Standing Order, applicable to industrial establishments in coal mines including Salanpur Colliery. You are, therefore, charged for the following acts of misconduct:—

1. 17(1)(a)—"Theft fraud or dishonesty in connection with the employer's business or property."
2. 17(1)(o)—"Giving false information regarding one's name, age, father's name, qualification or previous service at the time of employment"

3. It appears from the materials on the record that the concerned workman, Chaturi Dusadh, submitted his explanation dated 12-7-1988 to the chargesheet (Ext. M-2) denying the charges and stating therein that his identification had not been challenged by any one nor any one else had claimed to be the son of Chaturi Dusadh, son of Anugrahit Dusadh, hence there was no case of impersonation or of fraud or cheating. About the charge of mentioning wrong permanent address the workman submitted in his explanation that he was residing at Katras Chaitodih Colliery since his childhood to the knowledge of all his neighbours, hence existence or non-existence of a village in the particular block was immaterial in so far identification was concerned. He claimed that he did not get appointment on any false identification rather his identification was verified by the management and since 17-1-1987 he was serving as Chaturi Dusadh which was his correct name.

4. The workman also claimed that so far as identity was concerned, the report of the police might warranted a criminal proceeding, which police case was sub-judice hence the management should not take any action against him.

5. After receipt of the reference both sides made appearance and the sponsoring Union, on behalf of the workman, submitted written statement in which earlier explanation of the workman was mentioned in its main particulars. It was also claimed that (at the time of appointment) the workman had filled up the police verification form giving his home address to be that at Chhatabad, Malkera, Dhanbad. It has been claimed that the management changed this address through overwriting over that form. This form known as "Identification Certificate" is on the record of the enquiry.

6. The validity of the domestic enquiry was also challenged in the written statement. Dismissal of the workman on the basis of that domestic enquiry has been assailed in the written statement and a prayer has been made to reinstate the workman with full back wage.

7. The management in its written statement submitted that the workman concerned had posed as Chaturi Dusadh giving

his permanent address to be at Village-Rampur, P.O. Debo, P.S. Hazaribagh, Dist. Hazaribagh and his temporary address as Village-Chhatabad, Malkera, Dhanbad. It was also submitted that in proof of permanent address the workman had submitted documents in the shape of alleged residential certificate granted by BDO/Mukhia and the Union leader, after which he was allowed to join on 14-1-87. It later transpired that the workman had fabricated the aforesaid certificate with the assistance of the Union officials. Thereafter the workman was issued chargesheet, and subsequently, a domestic enquiry was held in which the charges were found to have been proved, on consideration of which the workman was dismissed from service by letter dated 12-9-88 issued by the Agent of the Mines, the competent authority.

8. Parawise reply to the written statement of the workman had also been given, denying the contentions of the workman.

9. It may be mentioned here that by order dated 20-10-92 the learned predecessor had held, while deciding the preliminary issue, that the domestic enquiry was held fairly and properly. It appears that this was also conceded to by the learned Advocate representing the sponsoring Union.

10. The point for consideration is as to whether or not the finding of the Enquiry Officer can be held to be just and proper and, if so, whether the punishment imposed upon the workman was justified.

11. From the materials on the record it will appear that the concerned workman had filed an identification certificate giving his L.T.I., with his photograph which appears to have been certified by the Mukhia of Debogam Panchayat as well by the B.D.O. at Hazaribagh (Ext. M-5 of domestic enquiry). The Mukhia appears to have signed on 10-11-86 whereas B.D.O. appears to have signed on a different date, Ext. M-6 of the domestic enquiry is another certificate granted by the General Secretary of Dalit Mazdoor Sangh, Sri Karu Ram who also appears to have certified his photograph, but this appears to have been provided after the workman was stopped from work.

12. In Ext. M-9 of the domestic enquiry, which is a letter written by the General Manager of Katras Area to the B.D.O. of Hazaribagh Block, the aforesaid certificate granted by the B.D.O. relating to the identification of the workman had been referred to in which a confirmation was sought from the B.D.O. as to whether or not that certificate was genuine and actually issued by the Officer. This letter further mentioned that the aforesaid enquiry of the management was returned back with the endorsement that the matter did not relate to Hazaribagh Block. This letter further intimated that Sri S. Tiwary, Senior Personnel Officer was carrying the letter in Ext. M-9 to obtain the confirmation about genuineness of the identification certificate issued to the workman. This letter is dated 2-5-88.

13. The previous letter (dated 16-2-88) referred to in Ext. M-9 appears to be Ext. M-8, which is a photo copy.

14. Sri S. Tiwary, Senior Personnel Officer who was assigned to contact the B.D.O. with Ext. M-9, was produced by the management as its witness before the Enquiry Officer. He submitted that as per letter dated 2-5-88 he contacted the B.D.O. in that regard who told him that the signature of the B.D.O. over the identification certificate of the workman was not genuine. According to this witness the B.D.O., one D. N. Yadav, told him that he was posted in that Block since 8-1-86 and that he had not issued any such certificate. He denied that the signature was his and informed Sri Tiwary that there was no Gram Panchayat by the name of Debogam Panchayat in that block nor there was any Mukhia by the name of Munshi Thakur.

15. Here it may be mentioned that on aforesaid Ext. M-5 the signature of the alleged Mukhia was in the name of Munshi Thakur. According to this witness, the B.D.O. also told that the stamp of the B.D.O. on identification certificate was also wrong.

16. Sri Tiwary further goes on to depose that thereafter the B.D.O. directed his "Bara Babu" to give him in writing that this certificate was not issued from Block and that there was no Gram Panchayat of this name in that Block. Sri Tiwary further deposed that then he contacted Bara Babu who wrote his certificate on the letter of the management

itself which he handed over to the General Manager. In cross-examination this witness was asked only one question in reply of which he admitted that he had not gone to the Village Rampur.

17. This is the basis on which the management had justified its action in dismissing the workman. The case of the management appears that the workman miscondacted himself by giving of wrong permanent address and by placing before the management a certificate of identification not granted by the B.D.O. or Mukhia.

18. No doubt, the management has examined other witness also and the Presenting Officer on behalf of the Management Sri P. Jha also gave his statement and proved the offer of appointment to the workman (Ext. M-3). The Presenting Officer further told the Enquiry Officer that when the workman came to join the service, he was told to bring first certificate of Mukhia and B.D.O. about his identification then he would be allowed to join. The Presenting Officer also placed Ext. M-6, already discussed. The appointment letter Ext. M-7 was also placed by the Presenting Officer.

19. I have already discussed the evidence of Sri S. Tiwary as MW-1. MW-2 was Ram Nath Mishra, the Dy. Chief Mining Engineer. He said that Chaturi Dusadh was working as miner. This witness had lodged the F.I.R. against the workman (Ext. M-10) with the police about the identification of the workman, for which he was directed by the General Manager through his letter Ext. M-11. This witness submitted that under order of the General Manager he also had issued the charge-sheet.

20. Therefore, the only evidence on which the management's case hinges is Ext. M-8 which contains the so-called certificate submitted by "Bara Babu" of the Block.

21. There are other points also which I shall discuss subsequently which rescue the workmen from the charge levelled against him, but even this solitary evidence relied upon by the management I do not find free from doubt.

22. First of all, while the management has taken care to file most of its documents in original, it has produced Ext. M-8 which is only the photo copy of the original. Sri Tiwary in his evidence has submitted that after obtaining the certificate of the Bara Babu, he had handed over the original to the General Manager. Therefore, the original was under the custody of the management, yet for some unexplained reason the management has not produced it.

23. The original should have been produced in view of the fact that the signature of Bara Babu is absolutely illegible, and there appears to be definite over-writing over the date under the initial of said Bara Babu. The endorsement of Bara Babu in this photo copy also is no very clear. What after some difficulty I could gather of this certificate, runs as follows :—

"This certificate has not been issued from this Block. Moreover this Village Panchayat is not in the Block".

24. This certificate does not mention the name of the Village Panchayat. This certificate, at best, is sketched one, which has not been granted by the B.D.O. The signature of the Bara Babu is illegible and his name has not been revealed by Sri S. Tiwary. This certificate does not bear any stamp.

25. It may be argued that no such questions were put in cross-examination to this witness. True it is but it may be borne in mind that this witness was being cross-examined by at best a semi literate workman who though appears to have signed over the paper of domestic enquiry but could not even correctly spell his name in Hindi. Since precisely for the reason that the claim of the management was being contested by a rustic worker, more it was important for the management, in the interest of natural justice, to produce good and conclusive evidence in presence of the workman. But by just producing a photo copy under the circumstance mentioned above the workman had no opportunity to put even a question or two to either the B.D.O. or to the Bara Babu.

26. Though the Evidence Act is not strictly applicable in a domestic enquiry or in enquiry by the Tribunal, still when

a claim of the management has been contested, the principle of natural justice could not be given a go-by. In a decision reported in 1972 Lab. I. C. 188—AIR 1972 (SC) 330 (M/s. Bareilly Electricity Supply Co. Ltd. Vs. The workmen and others) their Lordships had held that the application of principles of natural justice did not imply that what is not evidence can be acted upon. On the other hand what is means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. Further observing, their Lordships held that if a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereto be filed and opportunity afforded to the Opp. Party who challenges his fact. Their Lordships further observed that even if all technicalities of the Evidence Act are not strictly applicable except in so far as Sec. 11 of the Industrial Disputes Act, 1947 and the rules prescribed thereto permit it, it cannot justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witness who have executed them if they are alive and can be produced.

27. In so far as Ext. M-8 is concerned, the original must have been available with the Manager but that has not been produced. Neither the B.D.O. nor Bara Babu proved the alleged certificate granted by the Bara Babu nor their affidavit was filed. Therefore I find this to be one of the most shaky evidence which it is hard to rely upon to inflict the punishment of dismissal upon the workman.

28. Moreover it is clear that the allegation of the management in the charge-sheet that since he had given wrong permanent address, he was not the genuine Chaturi Dusadh but was impersonating the real Chaturi Dusadh, has no leg to stand upon for the simple reason that there is nothing on the record to show that there even was another Chaturi Dusadh with the same photograph. On the other hand, there is no evidence on the record to show that he was not the real Chaturi Dusadh.

29. Even in Ext. M-5 (Identification Certificate) he has given his present address to be at Chhatabad, P. S. Katrasgarh, Dist. Dhanbad—Chaturi Dusadh has examined himself as witness who has claimed that his Village was at Rampur P.O. Dewo, P.S. Chauparan. He further said that since his childhood his ancestor had taken him to Chaitudih, which was his present address and that since his childhood he was leaving at that place and that they also had built their house there. This witness has claimed that this fact could be enquired into. During cross-examination he stuck to his claim and also admitted the verification roll which he had filled at the time of joining the service, photo copy of which was shown to him, which was marked Ext. M-12. Here also he has given his permanent address to be at Chatabad. This form was signed by two witnesses of Chatabad which fact also was admitted by the workman. It may be mentioned that by both the sides, Chaitudih, Chhatabad or Chaitudih appears to have been treated as one and same place.

30. WW-2 is Jay Shree Singh who was working at Katras Chaitudih Colliery. He claimed that he knew Chaturi Dusadh since 1955-56. According to his evidence Chaturi Dusadh lived there since his childhood. At the time of his giving evidence Chaturi Dusadh according to the witness, was running a shop. It may be recalled here that during that period the workman was under suspension.

31. During cross-examination though this witness could not name of the father of Chaturi Dusadh, but he showed acquaintance with him by saying that earlier he was working in some private job but after his service with the "Government" he did not do any other work. He could not say the permanent address of Chaturi Dusadh. But this is not unnatural for persons living in the locality not to know such details as permanent home address of other persons.

32. Other witness is Moti Gope who also has claimed that he knew Chaturi Dusadh since his childhood, i.e. since last 30 to 35 years, who was living there. When asked about his permanent home address this witness said that Chaturi Dusadh originally lived at Hazaribagh as per his knowledge,

but he had seen him at his present address since he came to know him.

33. Therefore, though the management has not brought any evidence on the record to show that the concerned workman was not the real Chaturi Dusadh S/o Angrahit Dusadh the workman has produced sufficient evidence to show that he was living at his present address since his childhood, as Chaturi Dusadh.

34. It is not the case of the management that Chaturi Dusadh got himself inducted into service in the name of some other person. There is nothing on the record to show that Chaturi Dusadh had derived any benefit by stating wrong permanent address, even if it be presumed for argument's sake that he had submitted a wrong permanent address. I do not find that either his present address or his identification can be disputed in any manner on the basis of materials on the record. Therefore even if it was proved that he had submitted a wrong address and a wrong certificate to prove the same, that can hardly be construed to be fake, fraud or dishonesty with which he was also charged in the charge-sheet, his not having derived any unlawful gain by doing so.

35. In so far as Charge under Clause 17(1)(o) is concerned, misconduct under this clause runs as follows :

"Giving false information regarding one's name, age, father's name, qualification or previous service at the time of employment."

But it may be noted here that giving false information about permanent address has not been mentioned as misconduct under this clause. There is no evidence to show that the concerned workman had given any wrong information relating to the matters mentioned in Clause 17(1)(o) of the Model Standing Orders.

36. In so far as giving wrong address is concerned, a decision of Hon'ble High Court of Judicature at Patna reported in 1967 (II) LLJ at 668 (between Bharat Ram Vs. Union of India and others) may be referred to. In that the workman was charged with two misconducts, the first being that he had acquired properties without obtaining previous sanction of the competent authority. The second charge was that he had concealed the description of his real caste and parentage in his Service Book. Though their Lordships dismissed the petition on the ground that he was also charged with graver offence (Charge No. 1) but observed about the second charge that the wrong parentage and caste given by the petitioner were not by themselves so serious as to hold him guilty of having violated the provision of Rule 3. Their Lordships observed that men give false statement of a harmless nature for so many reasons and some for no reason at all. Their Lordships also observed that there was no finding to the effect that by giving incorrect description of his caste, the petitioner obtained any unfair advantage for himself, or else that any other officer was deprived of his benefits, hence this charge was of a very trivial nature.

37. In this case also it has not been proved that if the workman had given a wrong permanent address, he had gained something which he otherwise could not have gained or by that he put someone to any loss. On this ground alone findings of the Enquiry Officer are fit to be set aside.

38. But so far the certificate of the Bara Babu is concerned, I have already discussed that point and have come to the conclusion that it was not safe to rely upon that sort of evidence for holding the workman to be guilty.

39. In any view of the matter I find sufficient reasons to disagree with the findings of the Enquiry Officer and consequent punishment awarded to the workman. In my opinion, it is a fit case in which it must be held that the management was unjustified in taking the action at it took.

40. Hence the award—the action of the management of M/s. B.C.C. Ltd. in relation to Salanpur Colliery in dismissing the workman Chaturi Dusadh, Miner Leader, from service with effect from 12-8-1988 was unjustified. The concerned workman is entitled to reinstatement in service, with back wages and attendant benefits. The management is directed to reinstate Chaturi Dusadh in this post which he

held before his dismissal within one month of this award becoming enforceable. The workman shall be paid full back wages and all those financial benefits which he otherwise would have got had he continued in the service.

Under the circumstances of the case the parties shall bear their own cost.

P. K. SINHA, Presiding Officer.

नई दिल्ली, 24 जून, 1994

का.आ. 1576.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुवर्ण में केन्द्रीय सरकार में भारत कोकिंग कोल लिमि. की पाथरडीह कोलियरी के प्रबन्धन के संबद्ध नियोजकों और उनके कर्म-कारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. I) धनवाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-6-94 को प्राप्त हुआ था।

[संख्या एन.-20012/176/88-डी-3(ए)/डी-4 (ए)]

आई. आर. (कोल-I)

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 24th June, 1994

S.O. 1576.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. I), Dhanbad as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Patherdih Colliery of M/s. B.C.C.L. and their workmen, which was received by the Central Government on 22-6-94.

[No. L-20012/176/88-D-III(A)/DIV(A)/IR(Coal-I)]

C. GANGADHARAN, Desk Officer
ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1 AT DHANBAD

In the matter of a reference under section 10(1)(d)
(2-A) of the Industrial Disputes Act, 1947.

Reference No. 53 of 1989

PARTIES :

Employers in relation to the management of Patherdih,
Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen

PRESENT :

Shri P. K. Sinha, Presiding Officer.

APPEARANCES :

For the Employers.—Shri R. S. Murthy, Advocate.

For the Workmen.—Shri S. Paul, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 13th June, 1994

AWARD

By Order No. L-20012/176/88-D-III(A)/D.IV(A) dated 12-5-1989, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause

(d) of sub-section (1) and sub-section (2-A) of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :—

"Whether the action of the management of Patherdih Colliery of Sudamdih Area of Messrs Bharat Coking Coal Limited, Dhanbad, in deleting the name of Shri Fakir Bouri, Miner Loader, CMPF No. 406467 from roll of the colliery with effect from 18-08-1976 is justified? If not, to what relief is the workman entitled?"

2. The concerned workman appeared and filed written statement stating therein that while working at Patherdih Colliery as Miner to the satisfaction of the officials, he reported sick on 12-7-76 and was given medical attendance Ticket for his treatment at Patherdih Colliery Hospital where he was treated upto 28-7-76 but since there was no improvement and since he suffered adverse effect in treatment he, as a result of wrong treatment, had got his nervous system effected and lost mental equilibrium. There after he was referred to Dr. B. N. Chakraborty, Sr. Medical Officer, Ranchi Manasik Arogyasala Kanke. He remained under the treatment of Dr. Chakraborty upto 26-4-87 after which he was granted a fitness certificate. He sent a letter by registered post to the Manager of Patherdih Colliery for allowing him to join and on 27-4-87 he submitted his joining report alongwith fitness certificate but he was told that his service stood terminated with effect from 18-8-76.

2. The workman has argued in the written statement that since the fact of his treatment was known to the management, it should not have terminated his service, that too, without giving any chargesheet or holding any departmental enquiry. The workman has claimed that he is absolutely fit to discharge his duty. Prayer has been made to be reinstated in service with full back wages.

3. The management in its written statement, besides technical objection, has submitted that the workman was employed since 17-10-71, but he absented himself continuously with effect from 9-6-75 without permission and without satisfactory cause, which was a misconduct as defined in the relevant Standing Order. Thereafter the management terminated the service of the workman for his continuous unauthorised absence and also because the workman had not given any information about his absence. His services were terminated by a letter dated 18-8-76. Since this was a misconduct on the part of the workman, the management was fully justified in terminating his service, particularly when the workman was not traceable since long.

4. In the rejoinder portion of the written statement the management has controverted the assertions of the workman as given in his written statement. About the workman having remained under the treatment of Dr. B. N. Chakraborty upto 26-4-87 and about his obtaining fitness certificate from the doctor the management in its written statement has said that the workman had fabricated the documents. The management also submitted in para 35 of its written statement that even this certificate did not show that he entered into the service on 17-10-1971 as Miner Ranchi. It has been submitted that since the medical certificate is dated 26-4-87, on the face of it is a fabricated document. A prayer has been made to reject the claim of the workman concerned.

5. It appears that before terminating the service of the workman, the management had not conducted any enquiry. Therefore the management was allowed by my learned predecessor to adduce its evidence in the Tribunal and the workman was also allowed to adduce evidence contra.

6. In his evidence the concerned workman has examined himself as his only witness. In his evidence he admitted that he entered into the service on 17-10-71 as Miner Loader and worked there till he reported sick on 12-7-76. This witness further said that he was under treatment of 'Kalo Docor' of Patherdih Colliery Hospital. But when he could not get well he was referred to Ranchi Manasik Arogyasala, Kanke by the Patherdih Hospital Authority. This witness proved medical certificate stating that he had received treatment at Ranchi Manasik Arogyasala, Kanke, marked Ext. W-1. This witness also proved Ext. W-2, under objection of the management's lawyer, stating that to be the photo copy of the Medical Attendance Ticket at

Patherdih Hospital. Ext. W-3 is the photo copy of prescription prescribed by Dr. Chakravarty. This witness said that after he was declared fit he came to the colliery and reported for duty but he was not allowed to do so. Thereafter he sent registered letter to the management for giving him employment. Photo copy of the letter was marked Ext. W-4. The witness submitted two postal receipts for having sent two registered letters which were marked Exts. W-5 and W-5/1. Ext. W-6 and W-6/1 were A.D. Cards. The witness further said that the management had told him that he was no longer in service. He did not get any notice nor any retrenchment compensation.

7. About Ext. W-2 the witness said that its original was probably lying in his house but which he promised to produce on the next date which he did not do.

8. The witness further admitted in cross-examination that he had no paper to show that he was referred to Ranchi Manasik Hospital from Patherdih Hospital though he claimed that he was admitted there. He said that since he was out of mind he did not remember as to when he was admitted in Patherdih Hospital, but he further said that he stayed in the hospital for about six months, in intervals. He further said that the fact that he used to be taken to Hospital by his relatives for five years. Perhaps this period of five years has been referred to in relation to his claim of treatment in Manasik Hospital. He admitted that he had no other paper except which he had produced in the Tribunal for showing that he was treated at Ranchi Manasik Arogyasala. This witness denied that Ext. W-1 was a forged document. He also denied the suggestion that he never was admitted in the mental hospital. The witness said that he is not in a position to produce Dr. Chakravarty who had treated him at Ranchi Manasik Arogyasala.

9. The statement of witness has inherent contradiction. Obviously his reference to staying in the hospital for six months at intervals is for the Patherdih Hospital but in his written statement he said that he fell sick on 12-7-76 where he was treated upto 28-7-76 after which he was referred to Ranchi Manasik Arogyasala at Kankeo.

10. After he was treated at Manasik Hospital at Kankeo from July/August, 1976 till 26-4-87, almost a period of 11 years, then there should have been more medical papers in support of his claim.

11. However, before examining the genuineness of his claim by scrutinising the documents produced by the witness, the relevant provisions in the Model Standing Orders may be referred to. Clause 17 of the Standing Orders catalogues the misconducts for which the punishment may extend upto the dismissal of the workman. Clause 17(i)(n) makes continuous absence without permission and without satisfactory cause for more than ten days one of such misconducts.

12. The workman neither has said in his evidence, nor has proved any document to show that he either had sought permission of the management for his absence, nor had at any time sent any information to the management about his absence before 26-4-87. Therefore, the witness can get relief only if he shows any satisfactory cause for his such a long absence. The management's only witness is Sibdas Mukherjee, an employee of M/s. B.C.C.L. and working in Patherdih Colliery since 1-10-1971. He has proved Ext. M-1 which is a letter received from the concerned workman dated 27-3-1987. But the witness also pointed out that this letter did not carry the thumb impression of Fakir Bouri. Obviously this letter neither has been signed nor contains any proof that it was sent by Fakir Bouri. From the endorsement it including Ex. M-1/1 it would appear that this letter was received on 29/4 and Dy. C.M.E. of the colliery made his endorsement on it on 30/4. Ext. W-6 which is A.D. Card, shows receipt of a letter on 29/4. Therefore there is also nothing to suggest that this letter was sent in the month of March, 1987. However, this letter has neither been signed nor it bears any thumb impression. Even this witness has been suggested by the learned Counsel of the workman that this letter was not at all sent by the concerned workman. With this suggestion goes one of the evidence, however trivial, on the strength of which the workman could have argued that he had sent a letter intimating about his illness and his current fitness, even before he got completely cured on 26-4-1987.

13. Ext. W-2 is said to be the photo copy of the Medical Attendance Ticket which the workman allegedly had received at Patherdih Hospital for his treatment. The first entry is dated 12/7 and the last is dated 20/7. But this does not contain any signature of a doctor, nor the details about the patient such as age, sex, occupation or number, even the name of the workman is totally illegible. Moreover this does not suggest that the holder of the ticket was referred to Manasik Hospital at Kanke which the workman had asserted in his written statement. Therefore this document can hardly be relied upon. There is no explanation as to why its original was withheld.

14. Coming to Ext. W-1, it appears to have been given by one Dr. B. N. Chakravarty on 26-4-87. In the letter his designation was given to be the retired Senior Medical Officer from Ranchi Manasik Arogyasala. This certificate obviously has been issued by the doctor on his personal pad showing his clinic to be situated at Kanke Road. This certifies that Fakir Bouri was "suffering from mental illness" and was under his treatment from 1-9-76 to 26-4-87 on which date he found him to be fit to resume his normal duty.

15. Ext. W-3, also dated 26-4-1987, is a prescription by the same doctor prescribing two medicines to the workman, including one which was a capsul of vitamins.

16. There are many reasons as to why this certificate can not help the workman. The reasons are detailed below :—

- (i) The clear case of the workman is that he was referred to Manasik Hospital from the colliery hospital. The workman has also said in his evidence that he was referred to Ranchi Manasik Arogyasala at Kanke by Patherdih Hospital Authority. Firstly that there is no evidence of any such reference having been made and secondly, the certificate at Ext. W-1 does not at all show that the workman was treated at Ranchi Manasik Arogyasala, Kanke though in his evidence he has claimed that he got the certificate from Ranchi Manasik Arogyasala at Kanke. At best this appears to be a certificate granted by a private practitioner;
- (ii) Though the doctor has claimed that the workman was treated under him for more than ten years, yet he has not described as to what exactly was the disease from which the workman was suffering. This appears to be unprofessional.
- (iii) The workman has claimed that he was treated at Patherdih Colliery Hospital upto 28-7-76 and thereafter he was referred to aforesaid mental hospital. But the certificate shows that the treatment had commenced from 1-9-1976.
- (iv) Though the rules of Indian Evidence Act are not strictly applicable to any such enquiry before the Tribunal, still if a document or a letter has been produced to establish some facts which are relevant to the enquiry, the writer should be produced. In a decision reported in 1972 Lab. I.C. 188 (M/S. Bareilly Electricity Supply Co. Ltd. VS. the Workmen and Others), their Lordships of Hon'ble Supreme Court have observed that the application of the principles of natural justice does not imply that what is not evidence can be acted upon. Rather, on the other hand, what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subject to cross-examination by the party against whom they are sought to be used. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the Opposite Party who challenges this fact.

17. For the aforesaid reasons I hold that Ext. W-1 does not help the workman.

18. Sri S. Pal, learned Counsel appearing for the workman has argued that when a workman was mentally unfit for so many years he could not be in a position to say about the

modalities of the treatment he underwent. This appears to be a desperate attempt to wriggle out of the contradiction in the stand taken by the workman in his written statement and the evidence produced in support of that. True it is that when a person is suffering from some serious mental ailment which makes him unable to understand his environ and things going around him, he would not be able to say what exactly happened during that period. But since the workman was fit to resume his normal duty on 26-4-87 this means that the gradually improved to this position in course of a long time because of his treatment. Therefore, even before 26-4-87 when he was certified to be absolutely fit he must have gained the capacity to atleast understand as to where he was being treated and by whom. The written statement which was prepared much later, therefore, should have contained the facts which were borne out of the documents in his possession.

19. Therefore there is absolutely no evidence to prove that this workman was treated at Ranchi Manasik Arogyasala at Kanke. Then if this witness was treated by Dr. Chakravarty in his private capacity then the workman was bound to be in possession of a good numbers of documents, such as, prescriptions, including results of clinical tests. But no such document appertaining to any period prior to 26-4-87 has been produced by the workman.

20. In such circumstance I hold that the workman has failed to give satisfactory reason for his continued absence without permission or any information for more than ten years.

21. The management has claimed that the workman was absent since 9-6-75 whereas the workman has claimed that he fell sick since 12-7-1976. In para 20 of his written statement the concerned workman has also admitted that his name was deleted from the roll of the colliery with effect from 18-8-76. Therefore, even if the workman had remained absent from 12-7-76, he had remained absent continuously for much more than ten days when his service was terminated on 18-8-76.

22. Even after his continued absence, had the workman joined the service within a reasonable period or had showed satisfactory reason for his long absence he would have been entitled to get reprieve. But in this case the workman has remained absent for more than ten years, without information, and has been unable to adduce evidence explaining satisfactorily his absence.

23. No industry can remain in good health if such long and unauthorised absence are condoned.

24. In view of the discussion above I do not find that the management of Patherdih Colliery were not justified in deleting the name of Fakir Bouri from the roll of the colliery with effect from 18-8-1976.

25. The following award is rendered,—

The action of the management of Patherdih Colliery of M/S. B.C.C.Ltd. in deleting the name of Fakir Bouri, Miner/Loader, from roll of the colliery with effect from 18-8-1976 was justified. The workman is not entitled to any relief.

In the circumstances of the case I award no cost.

P. K. SINHA, Presiding Officer

नई दिल्ली, 24 जून, 1994

का. आ. 1577.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, में. भारत कोकिंग कोल लिमि. की कतरास छोड़ुडीह कोलियरी के प्रबन्धन के संबद्ध नियोजकों और उनके कर्म-कारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 2) धनबाद के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 22-5-94 को प्राप्त हुआ था।

[संख्या एल.-24012/62/86-डी-4(बी)/आई. आर./
(कोल-I)]

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 24th June, 1994

S.O. 1577.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of Katras Choitudih Colliery of M/s. B.C.C.L., and their workmen, which was received by the Central Government on 22-6-1994.

[No. I-24012/62/86-D.IV(B)/IR(Coal-I)]

C. GANGADHARAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT :

Shri B. Ram, Presiding Officer.

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947

Reference No. 67 of 1987

PARTIES :

Employers in relation to the management of Katras Choitudih Colliery of M/s. Bharat Coking Coal Limited and their workmen.

APPEARANCES :

On behalf of the workmen : Shri D. Mukherjee, Secretary, Bihar Colliery Kamgar Union.

On behalf of the employers : Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, Dhanbad, the 15th June, 1994

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012(62)/86-D.IV(B), dated, the 1st January, 1987 :

THE SCHEDULE

"Whether the demand of Shri H. S. Biswas, Asstt. Cap Lamp Incharge Gr. II of Katras Choitudih Colliery of M/s. B.C.C. Ltd. for promotion/regularisation as Cap Lamp Incharge Gr. I w.e.f. 2-12-83 and payment of Cat. V wages from 1980 is justified? If so, to what relief the workman is entitled?"

2. As per schedule of reference the concerned workman Shri H. S. Biswas has demanded his promotion/regularisation as Cap Lamp Incharge Gr.-I with effect from 2-12-83 and also for payment of Cat. V wages from 1980.

3. The concerned workman has filed W.S. stating that he has been working as permanent workman of Katras Choitudih Colliery since long time. According to him in the year 1980 the management promoted Shri K. K. Dutta as Cat. V Cap Lamp Fitter superseding the concerned workman although Shri Dutta was junior to him.

4. It was further stated that the management issued an office order dated 2-12-83 whereby directed the concerned workman to work as Cap Lamp Incharge Gr.-I. It is stated further that since after the aforesaid order he has been working as Cap Lamp Incharge in Grade-I continuously and to the full satisfaction of the management. In spite of the aforesaid fact the management has been paying him Grade-II wages.

5. The concerned workman represented before the management several times for payment of Grade-I wages for performing the job of Cap Lamp Incharge but all proved in vein. Ultimately the union raised industrial dispute before the ALC(C), Dhanbad which ended in failure giving rise to the present reference.

6. The management resisted each and every claim of the concerned workman stating through the W.S. that the concerned workman is an Asstt. Cap Lamp Incharge and his promotion to the post of Cap Lamp Incharge in Grade-I is unjustified. It was stated that previously Shri Biswas was working as Cap Lamp Fitter in Cat. IV and vide office dated 3-3-83 he was promoted as Asstt. Cap Lamp Incharge on the recommendation of the D.P.C. During the course of conciliation proceeding the matter was examined and it was found that Shri K. K. Dutta had joined the services in the colliery in 1959 as Cap Lamp Helper whereas the concerned workman joined his services in the colliery in 1963 as Electric Helper. Thus the concerned workman was junior to Shri Dutta.

7. It was further submitted that the concerned workman was promoted to the post of Asstt. Cap Lamp Incharge on 3-3-83 and as per cadre scheme there was no scope for further promotion. It was therefore prayed that the reference be answered in favour of the management and against the concerned workman.

8. The question for consideration would be as to whether the concerned workman can be promoted/regularised as Cap Lamp Incharge with effect from 2-12-83, and be paid as Cat. V wages from 1980?

9. The reference has been heard afresh after an order of remand recorded on 9-2-94 by the Hon'ble Patna High Court, Ranchi Bench. The management examined one more witness namely Shri Anil Kumar Rajbanshi MW-2 after an order of remand. No further witness was examined on behalf of the workman. The learned counsel of both the sides have already been heard at length.

10. From the pleadings it appears that the concerned workman demanded two reliefs. Firstly he demanded promotion/regularisation as Gr. I Cap Lamp Incharge with effect from 2-12-83. Secondly Cat. V wages with effect from 1980 with arrears of wages and attendant benefits.

11. First of all I may take up the second demand i.e. Cat. V wages with effect from 1980. The cause for this demand has been stated in para-3 of the W.S. of the workman. It is stated that in the year 1980 the management promoted Shri K. K. Dutta as Cat. V Cap Lamp Fitter superseding the concerned workman. It was also stated that Shri K. K. Dutta was junior to the concerned workman. However, the management refused and stated that Shri Dutta had joined in the service of the colliery in 1959 as Cap Lamp Helper while the concerned workman joined in the year 1963 as Electric Helper. Thus the management asserted that Shri Dutta was senior to the concerned workman and it was wrong to suggest that he superseded the concerned workman. The management got proved a photo copy of Form B Register Ext. M-3 to prove this fact. The name of the concerned workman appears at Sl. No. 127. He was shown to have joined as Electric Helper in 1963. The name of Shri K. K. Dutta appears at Sl. No. 175. He was shown to have joined as Cap Lamp Fitter in 1959. By this document it is proved that Shri Dutta was senior to the concerned workman. Prima Facie I have no reason to disbelieve this document.

12. The concerned workman while deposing as WW-1 stated that he had been working as Electric Helper in Katras Choitudih colliery since 1958 and was promoted to the post of Cap Lamp Fitter in 1973. Admittedly, he did not raise any objection when Shri Dutta was promoted to Cat. V as Cap Lamp Fitter. He knows that in Form B Register his date of joining has been shown as 1963 but he did not raise any dispute for correction of such wrong entry. He claimed to have written to the management for necessary correction but we have no document to support this contention. At this stage the learned counsel for the workmen Shri D. Mukherjee conceded that there was no evidence on the record to support the point that the concerned workman was senior to Shri K. K. Dutta. In the circumstances, and on the basis of the finding so recorded I am to hold that the concerned workman was not entitled for payment of Cat. V wages with effect from 1980.

13. The next point that requires consideration is whether Shri Biswas the concerned workman was entitled for regularisation as Cap Lamp Incharge Grade-I with effect from 2-12-83.

14. The job description of Cap Lamp room personnel has been spelt out in Annexure VII-V of NCWA-III. There is a post like Asstt. Lamp Room Incharge in Clerical Grade-II. The next promotion is to the post of Lamp Room Incharge, Clerk Grade-I. But for promotion to this post three years experience as Asstt. Lamp Room Incharge Clerical Grade-II was required. So according to the job description there is no post like Asstt. Cap Lamp Incharge or the Cap Lamp Incharge. Admittedly, the concerned workman was promoted to the post of clerical Grade-II on 3-3-83 and prior to that he was Cap Lamp Fitter in Grade-IV. He is demanding promotion as Lamp Room incharge Grade-I equivalent to Cap Lamp Incharge Grade-I with effect from 2-12-83 i.e. after about 9 months from the first promotion. The learned counsel for the management urged that it looks something very ridiculous that a workman will be promoted within such a short span of time. The management has proved the office order dated 3-3-83 whereby the concerned workman and few others were promoted to next higher rank. Sri Biswas was promoted as Asstt. Cap Lamp Incharge Grade-II from Cap Lamp Fitter Cat. IV. MW-1 Shri S. N. Verma, Manager, Katras Choitudih Colliery has stated that three years experience as Asstt. Cap Lamp Incharge is necessary for next promotion to the post of Cap Lamp Incharge as per cadre scheme.

15. MW-1 has stated in cross-examination that the concerned workman was assigned to work as Cap Lamp Incharge and he also worked as such. Full reliance has been placed upon Ext. W-1 by the workmen which is an office order dated 2-12-83. In the said office the concerned workman has been shown as Cap Lamp Incharge. The concerned workman and others were directed to take charge of their new place of work by 4-12-83 in the capacity of Cap Lamp Incharge. By the same order one Shri S. G. Roy has been shown as General Cap Lamp Room Incharge for looking after all cap lamp rooms. By the management it has been explained that Shri Roy was incharge general and others were to work under him. MW-2 Shri A. K. Rajbanshi has been examined after an order of remand to explain Ext. W-1. He was the authority to issue the office order (Ext. W-1). According to him the word 'general cap lamp incharge' means a competent person and the post is statutory. He explained that there is difference between cap lamp incharge and general cap lamp incharge in the sense that the later is a statutory post and it is held by an experienced man while cap lamp incharge is not a statutory post and is held by any workman. According to him even the Asstt. Cap Lamp Incharge can be entrusted on the work of cap lamp incharge. However, in cross-examination the witness admitted that there was no post like general cap lamp room incharge. He stated that in Coal Mines Regulations the word "General" is not there.

16. In order to explain the above position we are required to go through some other important document brought on the record. Under Ext. W-1 one Shri B. K. Sengupta has also been shown as Cap Lamp Incharge. Under Ext. M-1 dated 3-3-83 Shri Sengupta has been shown to have been promoted from Asstt. Cap Lamp Incharge Grade-II to the post of Cap Lamp Incharge Grade-I. The question is if Shri Sengupta was already in Grade-I then how he was made to work under Shri S. G. Roy, who according to the management was also in Grade-I. This is suggestive of the fact that the senior among the cap lamp incharge was made to act as overall incharge. This does never mean that Shri Roy was senior in grade and rest were junior to him.

17 Ext. M-4 is another document dated 14-2-86 whereby the management tried to correct its own error. It appears that the management after complete 2 years of the office order dated 2-12-83, woke up from deep slumber and addressed a letter to the Personnel Manager, Katras area stating that in the office order dated 2-12-83 the word "Assistant" is missing due to clerical error. The letter was written by the Dy. C.M.F., Katras Choitudih Colliery. He wanted to impress upon that under Ext. W-1 the concerned workman including Shri Sengupta should have been shown as Asstt. Cap Lamp Incharge instead of Cap Lamp Incharge. But Ext. M-2 which is the document of the management stands contradicted by this letter. Shri Sengupta as said above had already been promoted on 3-3-83. Then how and under what circumstances he should have been shown as Asstt. Cap Lamp Incharge on 2-12-83. These are almost confusing and it seems that the management of the colliery had been working in most careless and confused manner. However, MW-1 has admitted that the concerned workman worked as Cap

Lamp Incharge. In cross-examination he elaborated that in the year 1983 the management had directed the concerned workman to work as Cap Lamp Incharge and as per direction the concerned workman started doing as Cap Lamp Incharge. In view of this evidence also there was no scope of issuing any letter like Ext. M-4. Again there is no proof that this letter Ext. M-4 was ever responded or acted upon.

18. Ext. M-4 is further falsified when MW-1 stated that if any document shows Shri Roy and Shri Sengupta as Asstt. Cap Lamp Incharge, that is wrong. In this connection we may also refer to Ext. M-5 to M-5/3 which are attendance register for different period. In all the registers the concerned workman has been shown as Asstt. Cap Lamp Incharge. Special reference has been made to the attendance for the period from 26-10-86 to 1-11-86 and 9-11-86 to 15-11-86 under Ext. M-1. In the attendance dated 9-11-86 to 15-11-86 one Jagdish Rajwar has been shown as Cap Lamp Fitter. Admittedly, he is a cap lamp fitter. But in the attendance dated 26-10-86 to 1-11-86 he has been shown as Asstt. Cap Lamp Incharge. The concerned workman and Shri B. K. Sengupta have also been shown as Asstt. Cap Lamp Incharge. The letter "A" appears to have been subsequently added. This must not be an amendment in view of order dated 14-2-86 (Ext. M-4) for the document has already been disbelieved to be of no value. If at all it was an amendment then how Shri Sengupta could have been shown as Asstt. Cap Lamp Incharge when he got promotion as back as in the year 1983. Again how would have been shown as Asstt. Cap Lamp Incharge. Apart from that there is no endorsement at the foot of the register that there has been any correction in view of the order dated 14-2-1986. All these are proofs that attendance register was maintained in most haphazard manner and that being the position no importance could be attached to any entry made thereunder. Under Ext. M-5/3 also the positions exists the same. Special reference can also be made to the attendance dated 3-8-86 to 9-8-86 and 17-8-86 to 23-8-86. Even in the remaining two registers the letter 'A' has been shown to have been added subsequently against the name of the concerned workman. This shows that the concerned workman has all along been working as Cap Lamp Incharge. Ext. M-6 series are the photo copies of the Bonus Register for the year 1986 wherein the concerned workman has been shown as Asstt. Cap Lamp Incharge.

19. From the discussions of the evidence both oral and documentary it is made clear that the concerned workman has been working as Cap Lamp Incharge which is Grade-I but admitted position is that he was promoted as Asstt. Cap Lamp Incharge on 3-3-83. According to MW-1 one is required to work as Asstt. Cap Lamp Room Incharge for atleast 3 years before he is promoted to the post of Cap Lamp Grade-I. Even before the Hon'ble High Court, Ranchi Bench it was canvassed on behalf of the management that the concerned workman could not have been promoted to the post of Cap Lamp Incharge unless he completed minimum period of 3 years service as Asstt. Cap Lamp Incharge. I have discussed all these aspects of the matter. The concerned workman deserved regularisation as Cap Lamp Incharge with effect from 3-3-86 i.e. after three years of his promotion as Asstt. Cap Lamp Incharge Grade-II. The management is thus directed to regularise the concerned workman with effect from 3-3-86 as Cap Lamp Incharge within two months from the date of publication of the Award and that he will be promoted to that post if and when the vacancy occurs. After regularisation he will get the wages and other benefits admissible to Cap Lamp Incharge Grade-I.

B. RAM, Presiding Officer

नई दिल्ली, 9 जून, 1994

का.प्र. 1578.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, आंध्रा बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-6-1994 को प्राप्त हुआ था।

[संख्या एल.-12011/30/92 आई.प्र. (बी-II)]
के. वी. वी. उष्णी, डैस्क अधिकारी

New Delhi, the 9th June, 1994

S.O. 1578.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the Award of the Industrial Tribunal Hyderabad as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Andhra Bank and their workmen, which was received by the Central Government on 9-6-94.

[No. L-12011/30/92-IR(B.II)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

Industrial Dispute No. 51 of 1992

PRESENT :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I

BETWEEN

The workmen represented by its Secretary, Andhra Bank Award Staff Union (Regd.) Lingampally, Hyderabad,

..PETITIONER

AND

Andhra Bank, Hyderabad represented by its General Manager (Personnel).

..RESPONDENT

APPEARANCES :

Sri C. Damodur Reddy, Advocate for the Petitioner,

M/s. K. Srinivasa Murthy and G. Sudha, Advocates for the Respondent.

Dated 20th day of May, 1994

AWARD

The Government of India, Ministry of Labour, by its Order No. 12011/30/92-IR(B.II) dt. 27-7-92 referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the Management of Andhra Bank and their workmen to this Tribunal for adjudication :

"Whether the demand of Andhra Bank Award Staff Union, Hyderabad asking for fixing of pay and Seniority of employees S/Sh. V. Mastanish, Clerk, P. Ramachandra Murthy, Sub-Staff, Smt. K. Hemalatha, Clerk; Smt. Parvathidevi, clerk, by taking into account of their past services in P. F. Trust of the Bank is justified? If not to what relief are the workman concerned entitled?"

This reference was registered as Industrial Dispute No. 51 of 1992 and notices were issued to both the parties.

2. The Petitioner-workman filed their claim statement on 7-6-1993 while the Respondent Bank filed their claim counter on 17-1-1994. For enquiry it was posted to 1-3-1994. Since 1-3-1994 there is no representation on behalf of the petitioner. Under the circumstances the evidence of the petitioner closed on 18-3-1994. For the evidence of respondent it was posted to 13-4-1994. On 13-4-1994 the matter was posted to this day for the evidence of respondent. The advocate on record for the respondent is not present. Then Junior Smt. J. Syamala asked time. It is an old matter of 1992, the evidence of respondent closed. For arguments it was posted to 15-4-1994. On 15-4-1994 the advocate for the petitioner is not present. The workman called absent. There is no representation on their side. Hence no arguments for the workman. Heard the arguments of the respondent.

3. Right from the beginning it is seen that the petitioner-workmen are not coming forward to prosecute their case nor they appeared before this tribunal to adduce their evidence and arguments. Under the above circumstances, there is no use of adjourning the case still further. I find that the petitioner-

workman is not interested in seeking their remedy. Hence this reference is terminated.

Award is passed.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 20th day of May, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I
Appendix of Evidence

NIL

नई दिल्ली, 9 जून, 1994

का. भा. 1579.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, यूको बैंक के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-6-94 को प्राप्त हुआ था।

[संख्या एल-12012/245/87 डी-II ऐ]
के. वी. बी. उण्णी, डेस्क अधिकारी

New Delhi, the 9th June, 1994

S.O. 1579.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of UCO Bank and their workmen, which was received by the Central Government on 9-6-1994.

[No. L-12012/24/87-D.IIA]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I.

Dated, 18th day of May, 1994
Industrial Dispute No. 15 of 1988

BETWEEN

The Workmen of UCO Bank,
Central Office, Sultan Bazar,
Hyderabad. ...Petitioner.

AND

The Management of UCO Bank,
Central Office, Sultan Bazar,
Hyderabad. ...Respondent.

APPEARANCES :

S/Sri V. Venkata Ramana, B. H Ravi, Advocate for
the Petitioner.

S/Sri P. V. R. Sarma and Khaja Moinuddin. Advocates
for the Respondent

AWARD

The Government of India, Ministry of Labour, by its Order No. L-12012/245/87-D.II(A) dated 29-1-1988 referred the following dispute under Section 10(1)(d) (2A) of the Industrial Disputes Act, 1947 between the Management of UCO Bank and their workmen to this Tribunal for adjudication :

"Whether the action of the management of UCO Bank in dismissing from service Sri K. Veera Reddy,

Clerk, with effect from 29-7-86 is justified? If not, to what relief is the workman entitled?"

This reference is registered as Industrial Dispute No. 15 of 1988 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the Petitioner read as follows:—The Management barely after two months of the agreement started harassing the employee and issued the charge sheet dated 15-10-1985. The workman replied to the charge sheet on 25-11-1985. The charges levelled by the management are flimsy and there is no prima facie case against the workman. Management conducted the enquiry *ex parte* and denied the opportunity to the workman to defend his case. The Management took an illegal action of dismissing the workman with effect from 26-7-1986 and issued a letter dt. 29-7-1986 imposing the punishment. The employee did not stand as surety to any one of the advance referred by the Management in the charge sheet. The Clerk in the bank is not at all the competent authority to grant any loan. Hence the action of the Management of UCO Bank is vitiated and unjustified. Therefore it is submitted that the action of the Management is illegal and against the principles of natural justice and violation of the BIPARTITE Settlement and other judgements. It is therefore prayed that this Hon'ble Tribunal may please to direct the Respondent to reinstate Mr. K. Veera Reddy, Clerk, Staff No. 11399 with full back wages and all other attendant benefits including the continuity of service and grant other reliefs as it deems fit and proper.

3. The brief facts of the counter filed by the Respondent-Bank read as follows:—It is true that a charge sheet dated 15-10-1985 was issued to the workman and he replied on 25-11-1985. It is denied that the allegation that the charges levelled against the workman by the Management are flimsy and there is no prima facie case against the workman. It is denied that the management took an illegal action of dismissing the workman. It is true that the workman was dismissed from the Bank's service with "immediate effect" vide letter dated 29th July, 1986. The management's action in dismissing the workman is legal and justified and is very much in consonance with the procedure for departmental action. Having committed serious acts of misconduct the workman cannot claim "carte blanche" under his clerical designation. Every employee, be a worker, clerk, supervisor or an Officer, is expected to discharge his duties honestly and faithfully. Failure on his part to do so will attract the disciplinary provisions of the service rules. The action of the management is legal and justified and is strictly according to the principles of natural justice and settled law and is within the provisions of the Bi-partite Settlement. That consequent the Divisional Manager had addressed to him a letter advising him to prove upon his record in the Office and to get the advance sanctioned to his friends and relatives including his wife adjusted with a short time bound period. The workman has not complied with this advice. On the other hand even at the Malkaigiri Branch the workman has violated the terms of the said Memorandum of Settlement and resorted once again to absent himself or long periods without application. Subsequently certain serious acts of omission and commission such as indulgence in advance to his brother and another inmate of his own address, have come to the notice of the Management. The Management has thereafter issued a Charge Sheet dated 15-10-1985 charging him with such acts of omission and commission to which he submitted his reply. He was indulging in all types of activities detrimental to the interest of the public and also misused his position as a Bank employee. The Management Bank therefore prays that the Hon'ble Tribunal be pleased to answer the reference in favour of the management and against the workman.

4. The point for adjudication is whether the action of the Respondent Bank in dismissing from service Sri K. Veera Reddy w.e.f. 29-7-86 is justified?

5. Before going into the merits of this case, the matter has come up for validity of the domestic enquiry conducted by the Respondent Bank as a preliminary issue. This Tribunal passed the Order on 11-5-1994 holding that the *ex parte* domestic enquiry conducted in this case is not vitiated for any reason.

6. Now this Tribunal has to decide whether the dismissal of the concerned workman is shockingly disproportionate to the gravity of the misconduct committed by him.

7. In this case the Petitioner Sri K. Veera Reddy was working as Clerk in Malakigiri Branch of the Respondent Bank. The case of the petitioner is that barely after two months of the agreement the management started harassing him and finally issued a charge sheet dt. 15-10-1985. The Petitioner-workman gave his explanation to the charge sheet dt. 25-11-85.

8. The allegation of the Respondent Bank is that certain serious acts of omission and commission such as indulgence in advances to his brother and another inmate of his own address, have come to the notice of the management, thereafter the management issued charge sheet dt. 15-10-1985 charging him with such acts of omission and commission to which he submitted his reply, that an enquiry was ordered, that in spite of repeated notices and opportunities given to him to defend his case the workman as stated in the foregoing paras of claim statement persistently refused to attend the enquiry and in view of his wilful absence, the management had no other alternative but to proceed with the enquiry ex parte, that the Enquiry Officer submitted his report on 9-7-1986 and that after hearing the workman on 23-7-1986 the Disciplinary Authority passed the order of dismissal dt. 29-7-1986 dismissing the workman with immediate effect.

9. At the very outset, a perusal of all the records submitted by both the parties would indicate that the petitioner-workman was issued with a charge sheet dt. 15-10-1985 and that the Petitioner-Workman submitted his explanation to the charge sheet dt. 25-11-1985. This fact of submitting explanation to the charge sheet is admitted by the Respondent-Bank. It is pertinent to note that the Respondent-Bank has submitted all the documents except the explanation of the Petitioner workman dt. 25-11-1985. What are the contents of the explanation dt. 25-11-1985 is not known to this Tribunal. The Respondent Bank in its counter para 9 at page 3 it is stated that the workman raised an Industrial Dispute on the proposed punishment before the Asst. Labour Commissioner (C), Hyderabad which was eventually settled during the conciliation proceedings dt. 30-8-1985 resulting in a Memorandum of Settlement under Section 12(3) of the I.D. Act with the following terms (a) Sri K. Veera Reddy has assured the management that he would be regular and punctual in attendance, (b) the Union has also assured that Sri Veera Reddy will hence forth be regular and punctual in his duties (c) the Management has agreed to take a lenient and compassionate view and the then proposed punishment of dismissal will not be inflicted upon Sri Veera Reddy (d) the functional allowance as a special assistant be withdrawn. The above facts are entirely different to the facts of the present case. The present case is of certain acts of omission and commission on the part of the petitioner workman which I find that it is not a very serious misconduct committed by the Petitioner-workman. It is seen that it is only a case of omission and commission which does not warrant dismissal from service. Hence I find that there is no merits for the Respondent-Bank in dismissing the petitioner workman from service and is against the principles of natural justice and violation of the Bipartite Settlement.

10. In the result, the action of the Management of UCO Bank in dismissing from service Sri K. Veera Reddy, Clerk with effect from 29-7-1986 is not justified. The concerned workman is entitled to be appointed as a fresh candidate into service within one month from the date of the publication of this Award. The concerned workman is not entitled for any back wages, attendant benefits. He is not entitled for continuity of service as he will be appointed as a fresh candidate.

Award passed accordingly.

Typed to my dictation given under my hand and the seal of this Tribunal, this the 18th day of May, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence.

Witnesses Examined on behalf of the Respondent Management :

M.W1 Sri B. R. Murthy
1491 GI/94-7.

Witnesses Examined on behalf of the Petitioner Workman:

W.W1 K. Veera Reddy

Documents marked for the Respondent Management:

- Ex. M1|27-12-85—Copy of the appointment order issued by the Disciplinary Authority to Sri B. R. Murty, Asst. Manager as Enquiry Officer.
- Ex. M2|5-4-86—Copy of the Enquiry Notice issued by Sri B. R. Murty, E.O., to Mr. K. Veera Reddy.
- Ex. M3—Enquiry Notice.
- Ex. M4—Enquiry Proceedings Book.
- Ex. M5|25-4-86—Notice intimating the ex parte enquiry conducted by M.W1.
- Ex. M6—Enquiry Report submitted by M.W1.
- Ex. M6|A to P—Exhibits marking in the domestic enquiry.
- Ex. M7—Another Notice of enquiry.
- Ex. M8—Returned Postal Cover of Ex. M7.

Documents marked for the Petitioner Workmen :

- Ex. W1|15-10-88—Photostat copy of the charge sheet.

नई दिल्ली, 9 जून, 1994

का. अ. 1580.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बम्बई नं. 1 के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 9-6-94 को प्राप्त हुआ था।

[संख्या एल-12012/17/90—आईआर (बी-2)]
के. वी. बी. उणी, डैस्क अधिकारी

New Delhi, the 9th June, 1994

S.O. 1580.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bombay No. 1 as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workmen, which was received by the Central Government on 9-6-94.

[No. L-12012/17/90-IR(B-II)]

K. V. B. UNNI, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, BOMBAY

PRESENT:

Shri Justice R. G. Sindhakar, Presiding Officer.

REFERENCE NO. CGIT-41 OF 1990

PARTIES:

Employers in relation to the management of Bank of India.

AND

Their workmen

APPEARANCES:

For the Management : Shri D' Souza, Officer.

For the Workman : Shri Phozdar.

INDUSTRY : Banking

STATE : Maharashtra

Bombay, dated the 31st day of May, 1994

AWARD

The Government of India, Ministry of Labour made the following reference to this Tribunal for adjudication under Section 10(1)(d) read with 2.k of the Industrial Disputes Act, 1947.

"Whether the action of the management of Bank of India in relation to its Urali Kanchan branch in not regularising Shri L. J. Shaikh, a Badli Sub-staff in spite of the fact that, he is working from 16-12-85 and have completed more than 240 days in subsequent years is justified? If not, to what relief the workmen is entitled to?"

2. Statement of claim has been filed by the General Secretary, Bank of India Workers' Union, Mr. Phoujdar. It is not in dispute that Shri Sheikh is working in the Urali Kanchan Branch, in Pune District. He is appointed temporarily as Badli Sepoy on daily wages. He is working as such, since 16-12-1985, and right from that date, he is working in Urali Kanchan Branch only. The Organisation contends that the Employees' Service Conditions are governed by Sastri Award, Desai Award, and Bi-partite Settlements amended from time to time to date. It is unfair labour practice says the organisation, to employ workmen as Badli workmen/casual employees and to continue them as such for years together, with the object to deprive them of the privilege and status or those of the permanent employees. It is also stated that to show favouritism or partiality to one set of workmen regardless of the merit, is a serious unfair labour practice, as contemplated by the Industrial Disputes Act, Schedule V, Item Nos. 10 and 9.

3. It is further contended that the change brought about if any, is improper, and illegal, and void, unless and until notice under Section 9A of the Industrial Disputes Act, 1947 is given to that effect.

4. The provisions of para 508 of Shastri Award says that the employees shall be classified into 4 categories namely, permanent employees, probationers, temporary employees and part-time employees. Employment as Badli, or Casual is not contemplated.

5. Mr. Sheikh, the aggrieved workman was sponsored by the Employment Exchange, and after selection was appointed as Badli Sepoy and he performs the duties of a regular/permanent Sepoy, and he is also paid regular wages applicable to him as Sepoy, and he is in continuous service with effect from 16th December, 1985. According to the Union, there was in the year 1986, a clear and sanctioned vacancy of sweeper, because, the sweeper of that branch was promoted to the category of Sepoy, and it was the resultant vacancy of the sweeper that ought to be filled in. Mr. Sheikh's willingness to work as Sweeper was asked, and he submitted an application dated 16-6-1988 indicating his willingness to work. He has not been since appointed, and therefore, this organisation was requested to take up the matter, and the then Joint Secretary of this Organisation, Mr. Phoujdar took up the matter at the appropriate level. Conciliation proceedings were held and discussions took place on several occasions, but, all that ended in a failure report.

6. The Union, further contends that, the Head Office of the Bank has instructed to fill up all those existing permanent vacancies of Sepoys/Sweepers by absorbing Badli employees from the permissible centrewise approved panel of Budli Sepoys who had completed more than 240 badli days of work, as on 1-2-1988 in any calendar year or in a span of any 12 months, and Mr. Sheikh was amongst such employees to be absorbed at Urali Kanchan Branch. However, the Bank adopted unfair labour practices and continued to appoint Mr. Sheikh as Badli Sepoy, in spite of the fact, that there was a clear sanctioned vacancy, and in not absorbing Mr. Sheikh in that branch in spite of the fact, that he had completed more than 240 days in a calendar year, and was in continuous service, and that according to the Organisation was a clear case of unfair labour practice.

7. The Organisation further states that the Bank has, in the past absorbed employees from the Badli panel, for all posts of full time Sepoys/Sweepers at Urali Kanchan Branch, from amongst the Badli Sepoys working at that branch only. They were absorbed at full time vacancies, and the names mentioned are : S/Shri Ashok Lokhande, M. K. Waghmode, and Vikram Lokhande. Yet another Budli Employee Shree

Primal was absorbed as full time Sepoy at Thaur Branch, who was earlier working as Badli sub-staff at Urali Kanchan Branch.

8. The Organisation contends that the existing practice/policy of absorbing the Badli Employees at Urali Kanchan Branch was changed by the management in June 1988, while filling up the vacancies of sweeper at that branch, and that was done without any notice under Section 9A of the Industrial Disputes Act, 1947. The prevailing practice is that the Badli Panel is prepared out of the local candidates only and these candidates are normally nominated by the Employment Exchange. They are later on selected and appointed as Badlies, and while so appointing they were assured of a job in future in that branch only. The Employment Exchange also does not nominate candidates from outside the specified place. This policy was applied by the Bank at Urali Kanchan Branch. The Bank has for years followed the unfair labour practice of appointing as Badlies and asking them to perform the work of regular sub-staff. Mr. Sheikh's case is a clear example of this. Mr. Sheikh has been deprived of the opportunity to work as permanent employee in spite of his eligibility and in spite of the vacancy. It has been also mentioned that, there is no provision for appointment as Badlies under any of the Awards or Bi-partite Settlements, and non-absorption of Mr. Sheikh as regular sub-staff in Urali Kanchan Branch when the Bank has in the past filled in permanent vacancies by absorbing Badli sub-staff, is in violation of the principles of equality.

9. The prayer therefore, is, that this Tribunal should hold that the action of the management of Bank of India in not regularising the services of Shri Sheikh, is not legal, and justified, and the management is involved in unfair labour practices of appointing Badli sub-staff at Urali Kanchan Branch and hence, directions to the Bank to regularise the services of Mr. Sheikh at Urali Kanchan Branch with effect from 16-12-1985, and further direction to give all incidental benefits to Mr. Sheikh and pass such incidental orders as deemed fit.

10. The management has filed written statement, and it appears therefrom that the facts are not much in dispute.

11. Preliminary objection has been raised on behalf of the management to the maintainability of the reference and objecting the locus standi of the Bank of India Workers' Organisation, and its General Secretary to espouse the cause for and on behalf of the workman Mr. Sheikh. It is also contended that there is no industrial dispute, and the ground mentioned is that the test is whether the dispute referred is one in which the workmen or substantial section of the workmen are having direct interest. Prayer has been made to try this issue as preliminary issue, and decide it first before entering into merits of this case.

12. With regard to the merits, it is admitted that Mr. Sheikh was sponsored by the Employment Exchange, and engaged from time to time from 16-12-1985 at the Urali Kanchan Branch of Bank of India (as Badli Sub-staff/Sweeper purely on temporary basis and on daily wages. He has been continued as such since he has completed more than 240 days.

13. It is contended on behalf of the Bank, that his services are still being engaged as Badli sub-staff Sweeper/Sepoy, when ever there is a need, and as regards his claim for absorption in a permanent vacancy, it is submitted that he has not been deprived of the same, and it may be on a part time or or full time vacancy, subject to availability. Urali Kanchan Branch falls under Pune Regional Office, and since it does not fall under the Agglomeration of Pune City, it has not been treated as Pune Local Branch. The existing permanent part time sub-staff if willing and otherwise is to be given a chance for absorption in a permanent full time vacancy by enhancing the working hours, and the then eligible candidate should be absorbed to the permanent part time vacancy. As per the provisions of the Bipartite Settlements, the part time employees are to be given preference for filling up full time vacancies. However, the above practice of absorbing the part-time permanent employees to the full time vacancies and the Badli sub-staff to the resultant part time vacancy was not uniformly followed in the Urali Kanchan Branch of the Bank till 1987. In view of this, it was initially proposed to absorb Mr. Sheikh in the permanent vacancy at Urali Kanchan Branch. However, it was thought by the Bank that if the

practice of absorbing the temporary/budli employees to the permanent full time vacancies are provided, the permanent part time employees will be in a disadvantage inasmuch as, the claim of his seniority would be superceded, and hence injustice would be done. It was according to the above practice of absorption/provision, of the Bipartite Settlements, and with a view to remove the distortion that had crept in, with respect to the branches outside pune local branches limit, it was finally decided not to absorb Mr. Sheikh in the full time vacancy at Uruli Kanchan Branch, and the same was filled in by absorption of a permanent part time employee. This in short is the defence of the management to the grievance of the Organisation made on behalf of Mr. Sheikh. The averments made in the statement of claim are admitted, and it is not necessary to refer to each one of them. Suffice it to say that the facts are not at all in dispute. It is however, denied that the management has committed any unfair labour practice, or guilty of making any discrimination, and reasons for appointment of those 4 persons are also given. It is contended that notice of change under Section 9A was not necessary, and that the point is also not relevant. It is also denied that there was any existence of approved budli panel of local candidates only. It is however, admitted that Mr. Sheikh was sponsored by the Employment Exchange. It is denied that the candidates sponsored by the Employment Exchange are assured of a permanent job in future. It is further stated that the terms of services are governed by the Bipartite Settlements, only, but they are governed by the existing practices, customs and usages prevailing in the Bank.

14. It is admitted by the management, that, there has been instructions from the head office to absorb the Budli sub-staff into permanent vacancies, and it is contended that the claim for absorption of Shri Sheikh has not been denied and he will be absorbed in a vacancy arising in the Bank. Prayer for rejection of the claim made by the organisation is made.

15. The parties have filed documents, and advanced arguments. Though it was urged on behalf of the management, that the Organisation has no locus standi and that it cannot espouse an individual/personal dispute which is not an industrial dispute, on behalf of the workmen, it was pointed out that this issue was raised by the management in an earlier proceedings before the Central Government Industrial Tribunal No. 2, Bombay and the same has been answered against the management by the Presiding Officer, CGIT No. 2, Bombay, and it is now barred by the principles of resjudicata. It says that specific issue was raised at Issue Nos. 1 & 2, and the same has been answered in favour of the Organisation, holding that it was an industrial dispute, and the Organisation has locus standi. The reasons have been also given. The parties to the said reference are the same as those before me, and the question that was referred for adjudication was also similar, namely; "Whether the action of the management of Bank of India in not giving regular posting to Mr. Tukaram Jadhav, a Casual workmen with effect from 27-6-1988 is justified ? If not, what relief is the workman entitled to ?" Therein the same defence was taken by the management, and therefore, the present contention of the Organisation is, that, it is not open to the management to say that it is not an industrial dispute, and is barred by the principles of resjudicata.

16. Then it is contended that, that Tribunal also held that the 16 employees who were appointed as Budlies and whose services were not regularised were entitled for regularisation from the date of dispute. The contention of Organisation, is, that, in view of the awards/judgements in reference Nos. CGIT-2/40 of 1987 and 36 of 1986, it is no more open to the management to contend that Mr. Sheikh is not entitled to regularisation. It is true that the workman in those two references were appointed as Budli workers, and had put in 240 days, and their services were still not regularised, and their claims for regularisation were rejected. But, it so happened that during the pendency of the reference, their services came to be regularised and therefore, that point did not arise for consideration, and the only point that arose was with regard to the date with effect from which, their services were to be regularised. I therefore, do not think that the issue is barred by resjudicata. It cannot be also a case of constructive Resjudicata. I shall deal with it, independently of the decision reached. I must however say that I had the benefit of reading the reasoning given by the learned Presiding Officer of CGIT-2, in that Award/Judgement,

17. In this case before me, the admitted position is that, he has put in more than 240 days. It is averred by the Organisation, that he has been working continuously in that branch since 1985, and as per the practices prevailing, he should have been appointed in a regular vacancy. It is also urged that the provisions of Shastri Award did not contemplate employment as Budli Workers under clause 508. It is pointed out that to do so is an unfair labour practice under point 10 of the Schedule V of the Act and since he has been continued as such since 1985 for years together, it amounted to unfair labour practice. In substance, the argument is that, he should have been absorbed in a regular vacancy in the Uruli Kanchan Branch, and it is rightly pointed out that there was a clear sanctioned vacancy and which fact has not been disputed by the management. Therefore, it is rather difficult to accept the line of reasoning advanced on behalf of the management for not appointing Mr. Sheikh to the regular full-time vacancy which occurred in 1986.

18. The parties have produced documents, which go to show that Mr. Sheikh was asked as to whether he was willing, and he had expressed his willingness. That was subsequent to a decision of the management to absorb those persons who were appointed as Budli workers in regular vacancies. There is no justification in the reasoning submitted that it was not applicable in his case. Though an attempt has been made to justify it on the ground that the Bipartite Settlements provided for they being appointed to the post by stating that the Budli workers should be first appointed to the post of part-time employees and thereafter to the full time vacancy. Clause 20.6 of the Bipartite Settlement of 1966 says that subsequent to the Bipartite Settlement, if any part time employee... other things being equal. Clause 20.4 provides for employment of part time clerks for certain types of work. The point before me, is not whether part time employees can be appointed, and what should be done with regard to them, at the time of appointment to full time vacancies, and whether they should be given preference at that time. The point is, whether, the persons appointed as Budlies and have worked as such, for years can be ignored and the same was in contravention of the practice prevailing, and with regard to regularisation/appointment to permanent vacancies after working for long time. The same was when done, it is termed as unfair labour practice and precisely the management also was of the view that they should be absorbed in regular vacancies, and accordingly directions were given by the Head Office, that those who have completed 240 days or more in a block of 12 months of or a calendar year, should be absorbed in the full time permanent vacancies. I find that the management is breathing hot and cold and trying to take shelter under the Bipartite Settlements/Awards, and when inconvenient, try to take recourse to customs, practices, and usages prevailing if it suits it. This will not be allowed to be done. Mr. Sheikh was sponsored by the Employment Exchange, he worked as Budli sub-staff in that branch continuously since December 1985, and it has been also admitted, that, though there was a vacancy at that branch, he was not absorbed in that vacancy, though in the past, similarly placed Budli workmen were absorbed at Uruli Kanchan, and one of them was also absorbed at Thevur Branch. All of them, the Bank appointed as regular full time Sepoys.

19. This is precisely the view taken by the learned Presiding Officer of the CGIT No. 2, in the case between the management and the workmen, in reference No. 40 of 1987 and 36 of 1988, and given effect to the regularisation from the date of the industrial dispute rejecting the contention of the management, that since they have been absorbed, on 15-7-1989, they were not entitled to any relief in the form of absorption with effect from 11-10-1985.

20. Certain authorities have been referred to and relied upon, including those of the High Court and the Supreme Court amongst them a decision of the Allahabad High Court in the case between Zakir Hussain and Engr. incharge Irrigation Department and others reported in 1994 (1) LLJ. p. 5 was one on which, reliance was placed on behalf of the management. Therein it has been held that "Regularisation cannot be made as a Rule of thumb, merely on the basis of completion of certain years of service by an employee. It depends on various facts, some of which have been mentioned above, and it is for the employer to decide as to whether, in view of the facts and circumstances of the case, the service of the employees who were appointed on ad-hoc/daily wage basis should be regularised." In the above decision (Supra) several

rulings including those of the Supreme Court have been referred to. Difficulties that the management will have to face if these rules are applied to are also discussed, and on the basis of the reasoning given, the above mentioned proposition has been laid down. In this case before me, the management thought it necessary to make provision for absorption of these Budli Employees who have been working for long and there were circulars directing their absorption if they had completed 240 days, and therefore, the difficulties of this provision have been thought of and taken care of by the management while issuing those circulars, and reaching an understanding between the management and the Organisation. It is mentioned therein that "to fill the existing 258 centre/zone/regionwise unfilled vacancies by absorbing budlee sepoys preferably from the centrewise approved panels of 537 Budlee Sepoys who have completed more than 240 working days as on 1-2-1988, in a block of 12 months or a calendar year. In regard to such unfilled vacancies if the required number of Budlee Sepoys who have completed more than 240 days as on 1-2-1988 is not available such vacancies will be filled in by absorbing the Budlee Sepoys from the respective approved centrewise panels, who have not completed 240 Budlee working days in a block of 12 months or in a calendar year. The process of absorption is to be completed by 30-6-1988."

21. It is to be seen therefrom that provision for absorption of the remaining Budli Sepoys was also decided upon by saying that they should be continued on the panels and deployed on leave vacancies on need basis, and to be regularised by absorbing into future vacancies that may arise during the year 1988 on account of was lages (sick) due to retirement, resignation etc., and in respect of opening of new branches and vacancies that may arise on account of promotions during the year. This process of absorption was expected to be completed by 31-12-1988. It also further stated that the remaining Budli Employees are to be absorbed in subsequent years against future vacancies, and finally mentioned that no more fresh Budli Sepoys are to be empanelled henceforth.

22. I, therefore, find that so far as the present reference is concerned, it is to be held that the action of the management in relation to its Urali Kanchan Branch, in not regularising the services of Mr. Sheikh inspite of the admitted fact, that he was working in that branch, as a Budli Sepoys with effect from 16-12-1985, and had completed more than 240 days in a calendar year of 12 months, is not justified. He will be entitled to regularisation. In this connection, I must mention here that the Organisation submitted that there was a clear sanctioned vacancy in that branch in the year 1986, though the exact date and month was not mentioned, and I do not find that there is any specific denial to this averment made in the statement of claim, and there is in fact an admission to this averment in para 20 of the written statement filed on behalf of the management. Therefore, he will be entitled to regularisation with effect from that date, and to all consequential benefits as a result of the regularisation.

R. G. SINDHAKAR, Presiding Officer

नई दिल्ली, 23 जून, 1994

का. आ. 1581.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकाम, महबूबनगर के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैबराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-6-94 को प्राप्त हुआ था।

[संख्या एन-40012/140/91-आईआर (सीयू) (पीटी)]

के बी. बी. उल्लेख अधिकारी,

New Delhi, the 23rd June, 1994

S.O. 1581.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Telecom, Mahboobnagar and their workmen, which was received by the Central Government on 22-6-1994.

[No. L-40012/140/91-IR(DU)(PL)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT:

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I.

Dated : 17th day of May, 1994

Industrial Dispute No. 9 of 1992

BETWEEN:

M. Venkata Swamy, S/o Late M. Ramulu, aged about 21 years, Casual Mazdoor ---Petitioner

AND

1. The Sub-Divisional Officer, Telecom, Mahboobnagar-509 050.

2. The Telecom District Engineer, Mahboobnagar-509 050. --- Respondents.

APPEARANCES:

M/s. C. Suryanarayana & P. Bhaskar, Advocates for the Petitioner.

M/s. M. Panthuranga Rao, B.G. Ravinder Reddy and M. V. Ramarao, Advocates—for Respondents.

AWARD

The Government of India, Ministry of Labour by its Order No. L-40012/140/91-IR(DU), dt. 21-2-1992 referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the Management of Telecom Mahboobnagar and their workmen to this Tribunal for adjudication:

"Whether the management of Sub-Divisional Office (Rural) Telecom Mahboobnagar is justified in terminating the services of Sri M. Venkat Swamy, Ex-Casual Mazdoor w.e.f. 16-10-1989? If not, what relief he is entitled to?"

This reference was registered as Industrial Dispute No. 9 of 1992 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the Petitioner-workman read as follows:—That the 1st Respondent recruited and employed the petitioner from 1-1-1989 to 15-10-1989 for a total of 272 days. During that period there were short breaks of 5 days in January, 1989, 3 days in May 1989, 5 days in August, 1989 and 4 days in September, 1989. The breaks were on account of cessation of work. But the services of the Petitioner were terminated w.e.f. 16-10-89 on the ground that he has recruited after 30-3-1985 and that the Director General, P&T by his Order 30-3-85 prohibited recruitment of any fresh casual mazdoors. The petitioner was not given any notice or paid notice period wages as per the mandatory provisions of Section 25-F of the I.D. Act. The petitioner submits that after absorbing several mazdoors the Telecom Department issued orders dt. 7-11-1989 to grant temporary status to those who could not be absorbed in the regular establishment for want of vacancies. It is thus clear that continuous one year service as casual labourers in the Telecom Department entitles them to temporary status pending their absorption in the regular establishment of the Department, according to their turn in the seniority list of casual mazdoors of a recruitment unit and for preparing the seniority list the Director General issued separate orders. The petitioner

therefore prays that this Hon'ble Tribunal may be pleased to hold and declare that his retrenchment is illegal, and consequently to direct the Respondents herein to reinstate him in service with full back wages, continuity of service and protection of his seniority and all other benefits which are consequential and/or incidental to such reinstatement and to pass the Award accordingly.

3. The brief facts of the counter filed by the Respondent Telecom read as follows:—The petitioner was engaged as a Casual Mazdoor on daily wages depending upon the availability of work. The work of casual mazdoors comes to an end when the work is over. The work of the casual mazdoor is not continuous and purely depends upon the availability of work. That is of Casual mazdoors, there is no question of termination. Casual mazdoors will be discontinued as and when the work is over. That there is no termination of service much less retrenchment of service. Section 25-F of the I.D. Act is not applicable to the facts and circumstances of this case and the question of complying with the provisions of Section 25-F does not arise. The Respondent is a Government of India Department and it has got procedure for engaging regular employees. The casual mazdoors are meant purely for doing odd jobs of nature of work and they have no right of regular nature to seek for absorption or for employment under the respondent. The various judgements cited by the petitioner in the counter are not relevant and are not applicable to the facts of this case. The petitioner was not eligible for granting of temporary status as he was not engaged prior to 30-3-85. It is therefore prayed that this Hon'ble Tribunal may be pleased to pass an Award holding that the petitioner is not entitled to any relief.

4. The point for adjudication is whether the Respondent is justified in terminating the services of Sri M. Venkat Swamy, Ex-Casual Mazdoor w.e.f. 16-10-1989 or not?

5. M.W1 was examined on behalf of the Respondent and no documents were marked on its side. No oral evidence has been adduced on behalf of the Petitioner but marked Exs. W1 to W9.

6. MW1 is S. M. Wali. He deposed that he is working under the Respondent from August 1992. He is giving evidence on the basis of the records. The casual mazdoors are engaged for temporary works of cable laying, and poles erection etc. This is not a continuous and regular work. The casual mazdoors are engaged till the work is completed for which they are engaged, and automatically they were disengaged after the work was completely. The petitioner was disengaged after 15-10-1989 as the work for which he was engaged is completed. No junior to the petitioner is being continued as casual mazdoor.

7. The case of the petitioner workman is that he was employed from 1-1-1989 to 15-10-1989 for a total period of 272 days of course with some breaks during the months of January, 1989, May 1989, August 1989 and September 1989, this break was on account of cessation of work, that the services of the petitioner were terminated w.e.f. 16-10-1989 on the ground that he has recruited after 30-3-1985 prohibiting recruitment of any fresh casual mazdoors, that the petitioner was not given any notice nor paid any notice period wages as per the provisions of Section 25-F of the I.D. Act, and that continuous one year service as casual labourers in the Telecom Department, entitled them to temporary status pending their absorption in the regular establishment of the Department, according to their turn in the seniority list of casual mazdoors of a recruitment unit and for preparing the seniority list the Director General issued separate orders and hence prayed for reinstatement.

8. On the other hand the contention of the Respondent that the petitioner was engaged as a Casual Mazdoor on daily wages depending upon the availability of work, they are engaged for laying the cables, erecting poles etc. that the work of the casual mazdoor comes to an end as and when the work is over, the casual mazdoors work is not continuous and based on purely depending upon the availability of work, that there is no question of termination of services much less retrenchment of service. That Section 25-F of the I.D. Act is not applicable to the case and it has got procedure for engaging regular employees.

9. As seen from the records and statements made by both the parties, I find the work of the casual mazdoor comes to an end as and when the work is over, the casual mazdoors are engaged for laying the cables, erecting poles etc. which I find that they are not a continuous work and the casual mazdoors are engaged depending upon the availability of work. I find that the casual mazdoors are discontinued as and when the work is over and hence the termination is not in violation of Section 25-F of the Industrial Disputes Act, 1947. Hence there is no termination of service much less retrenchment of service. When the casual mazdoors are meant purely for discharging casual nature of work, the petitioner cannot seek for absorption or for employment under the Respondent. Moreover the Respondent is a Government of India Department and it has got its own procedure for engaging regular employees. Hence I find that the petitioner is not eligible for seeking temporary status as he was not engaged prior to 30-3-1985. On consideration of all the facts and circumstances of the case, I find that the petitioner is not entitled to any relief i.e. reinstatement into service and for seeking grant of temporary status.

10. In the result, the Management of Sub-Divisional Office (Rural) Telecom Mahabubnagar is justified in terminating the services of Sri M. Venkat Swamy, Ex-Casual Mazdoor w.e.f. 16-10-1989. The concerned workman is not entitled to any relief.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 17th day of May, 1994.

V. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence

Witnesses Examined for the Petitioner/Workman:	Witnesses Examined for the Respondent/Management
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NIL

M.W1 S. M. Wali

Documents marked for the Petitioner/Workmen:

Ex. W1—Working days particulars (xerox copy)

Ex. W2 30-3-85—Xerox copy of DGP&T 230/84-STN.

Ex. W3—Xerox copy letter of CCM Telecom. Reg. Grant of temporary status to casual mazdoors.

Ex. W4 1-10-84—Xerox copy D.G. Order.

Ex. W5 11-2-91—Xerox copy of complaint made to the RLC(C) Hyderabad by the workmen.

Ex. W6 8-4-91—Xerox copy of the parawise remarks.

Ex. W7 15-5-91—Xerox copy of rejoinder of the petition.

Ex. W8—Xerox copy of Minutes of conciliation.

Ex. W9 1-8-91—Xerox copy of Failure of Conciliation Report.

नई दिल्ली, 23 जून, 1994

का. आ. 1582—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकॉम, नगरकुल के प्रबन्धन के संवर्धनियों और उनके कामकाजों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचपद को प्रकाशित करती है जो केन्द्रीय सरकार को 22-6-94 को प्राप्त हुआ था।

[संख्या एल-10012/110/91—आईआर (डीयू) (पीटी)]
के. बी. दी. उन्नी डैस्क अधिकारी

New Delhi, the 23rd June, 1994

S.O. 2582.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal Hyderabad as shown in the

Annexure, in the industrial dispute between the employers in relation to the management of Telecom, Nagarkurnool and their workmen, which was received by the Central Government on 22-6-94.

[No. L-40012/110/91-IR(D.U.) (P.)]

K. V. B. UNNY, Desk Officer.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Sri Y. Venkatchalam, M.A., B.L., Industrial Tribunal-I.

Dated : 30th day of May, 1994

INDUSTRIAL DISPUTE NO. 71 OF 1991.

BETWEEN :

S. Ramulu, S/o Bhoomaiah about 23 years
.. Petitioner.

AND

1. The Sub-Divisional Officer, Telecom
Phone, Nagarkurnool-509 209

2. The Telecom District Engineer,
Mahaboobnagar-509 050. .. Respondents.

APPEARANCES :

M/s. C. Suryanarayana and P. Bhaskar, Advocates
for the Petitioner.

M/s. M. Panduranga Rao, B. G. Ravinder Reddy
and M. V. Ramarao.

AWARD

The Government of India, Ministry of Labour by its Order No. L-40012/110/91-IR(DU), dt. 15/19-11-1991 referred the following dispute under Section 10(1)(d) (2A) of the Industrial Disputes Act, 1947 between the management of Telecom and their workman to this Tribunal for adjudication :

"Whether the management of Sub-Divisional Office (Rural), Telecom, Nagarkurnool, is justified in terminating the services of Sri S. Ramulu w.e.f. 16-10-89? If not, to what relief the workman is entitled to?"

This reference was registered as Industrial Dispute No. 71 of 1991 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the Petitioner read as follows :— The Petitioner is a Scheduled Caste candidate. He claims for reinstatement is based not only on the orders that he enjoys constituted rights and privileges and of being given preference over other candidates belonging to OC category but also the fact that he was recruited and employed by the Respondents for 233 days from 12-1-1989 to 15-10-1989 without paid weekly offs except during June and July, 1989 during which he was employed for all the days in the two months. He was retrenched on the ground that he was recruited after 30-3-1985 contrary to the orders of the DG, P&T New Delhi. But the Petitioner was not given

notice nor was he paid one month wage as per the mandatory provisions of Section 25-F of the I.D. Act. The petitioner submits that after absorbing several mazdoors, the Telecom Department issued orders dt. 7-11-1989 to grant temporary status to those who could not be absorbed in the regular establishment for want of vacancies. It is thus clear that continuous one year service as casual labourers in the Telecom Department entitles them to temporary status pending the absorption in the regular establishment of the Department, according to their turn in the seniority list casual mazdoors of a recruitment unit and for preparing the seniority list the Director General issues separate orders. The petitioner prays that this Hon'ble Tribunal may be pleased to hold and declare that his retrenchment is illegal, null and void and consequently to direct the Respondents herein to reinstate him in service with full back wages, continuity of service, protection of his seniority and all other benefits which are consequential and/or incidental to such reinstate and to pass the Award.

3. The brief facts of the counter filed by the Respondent read as follows : The petitioner was engaged as a Casual Mazdoor as daily wages depending upon the availability of work. The work of the casual mazdoor comes to an end as and when the work is over. The work of Casual mazdoors is not continuous and purely depends upon the availability of work. The allegation that the petitioner worked continuously for 233 days during the period from 12-1-1989 to 15-10-1989 is not correct. He was engaged as and when the work was available. In case of casual mazdoors, there is no question of termination. Therefore the allegation that the petitioner was terminated from service and that the termination is in violation of Section 2-F of the I.D. Act is not correct. That there is no termination of service much less retrenchment of service. Section 25-F of the I.D. Act is not applicable to the facts and circumstances of this case and the question of complying with the provision of Section 25-F of the I.D. Act does not arise. The Respondent is a Government of India Department and it has got procedure for engaging regular employees. The various judgements cited by the petitioner in the claim statement are not relevant and are not applicable to the facts of this case. The fact that the petitioner is unable to give the date of retrenchment itself shows that there is no retrenchment. The petitioner was not eligible for granting of temporary status as he was not engaged prior to 30-3-1985. It is prayed that this Hon'ble Tribunal may be pleased to pass an Award holding that the petitioner is not entitled to any relief.

4. The point for adjudication is whether the Respondent is justified in terminating the services of Shri S. Ramulu w.e.f. 16-10-1989?

5. M.W. 1 was examined on behalf of the Respondent-Management. No documents were marked on its side. No oral or documentary evidence has been adduced on behalf of the Petitioner-workman.

6. M.W1 is S. M. Vali. He deposed that he is working as Asst. Engineer in 2nd Respondent's office. He knows about this case through the records. The petitioner was engaged as casual mazdoor from January to April 1989 and he was again engaged from

June to October 1989. Even during this period his service is not continuous. The petitioner was engaged for purely temporary works and these works are not regular in the department. In this case the petitioner was engaged before his engagement that he was employed only for a specific work and as soon as the work was completed his employment was automatically comes to an end. Even in his entire service the petitioner has not completed 240 days.

7. The petitioner workman was engaged at Casual mazdoor on daily wages depending upon the availability of work. There is no dispute that the casual mazdoors are engaged for laying the cables, erecting poles etc. It is seen in the claim statement that the petitioner workman worked for 233 days from 12-1-1989 to 15-10-1989 without paid weekly offs except during June and July 1989, and retrenched thereafter on the ground that he was recruited after 30-3-1985 contrary to the orders of the DG, P&T New Delhi. The case of the Respondent that the petitioner worked continuously for 233 days during the period from 12-1-1989 to 15-10-1989 is not correct. The allegation of the Respondent; that the work of casual mazdoor is not continuous and purely depends upon the availability of work. The work of the casual mazdoors comes to an end as and when the work is over. As such there is no question of termination nor retrenchment of service. Hence Section 25-F of the I.D. Act is not applicable to the case of this petitioner. It is seen that the Respondent is a Government of India Department and it has got some procedure or norms for engaging regular employees. Hence I find that this petitioner has no case to be absorbed as regular employee. I find that the casual mazdoors are meant purely for discharging casual nature of work and that the petitioner has not got any right to seek for absorption. I find that the various judgements mentioned in the claim statement are not relevant to the facts of this case. The petitioner has not adduced any oral evidence or documentary evidence to show the date of retrenchment or any record to show that he has put 233 days continuous service under the Respondent Department and that he is not eligible for granting of temporary status to him as he was not engaged prior to 30-3-1985. Hence I find there is no merits for the petitioner to seek reinstatement with full back wages, and continuity of service.

8. In the result, the management of Sub-Divisional Office (Rural), Telecom, Nagarkurnool, is justified in terminating the services of Sri S. Ramulu w.c.f. 16-10-1989. The concerned workman is not entitled to any relief.

Award passed accordingly.

Dictated to the Stenographer, transcribed by him, given under my hand and the seal of this Tribunal, this the 30th day of May, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I.

Appendix of Evidence.

Witnesses Examined
for Petitioner:
NIL

Witnesses Examined for
Respondent:
M.W1 S. M. Vali.

Documents marked for Petitioner :

NIL

Documents marked for Respondent :

NIL

नई दिल्ली, 23 जून, 1994

का. आ. 1583.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एम.डी.ओ. टेलीकॉम, अदिलाबाद के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण हैदराबाद के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 22-6-94 को प्राप्त हुआ था।

[संख्या एस्-40012/203/91-आईआर (डीयू) (पीटी)]
के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 23rd June, 1994

S.O. 1583.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of SDO, Telecom, Adilabad and their workmen, which was received by the Central Government on 22-6-94.

[No. L-40012/203/91-IR(DU) (Pt.)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT
HYDERABAD

PRESENT :

Sri Y. Venkatachalam, M.A., B.L.,
Industrial Tribunal-I

Dated : 30th day of May, 1994
Industrial Dispute No. 41 of 1994

BETWEEN

B. Venkataramana.
S/o Ramulu,

Ex-Casual Mazdoor.

—Petitioner

AND

1. The Sub-Divisional Officer,
Telecom. Adilabad-504001.

2. The District Engineer,
Telecom,
Adilabad-504001.

—Respondents

APPEARANCES :

M/s. C. Suryanarayana & P. Bhaskar, Advocates
for the Petitioner.

M/s. M. Panduranga Rao, M. V. Rama Rao, Adv-
vocates for the Respondents.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-40012/203/91-IR(DU) dated 25-6-1992 referred the following dispute under Section 10(1)(d) (2A) of the Industrial Disputes Act, 1947 between the management of SDO, Telecom, Adilabad and their workmen to this Tribunal for adjudication :

“Whether the management of Sub-Divisional Officer (Rural) Telecom, Adilabad is justified in terminating the services of Sri S. Venkataramana, Ex-Casual Mazdoor w.e.f. 1-9-1989 ? If not, what relief he is entitled to ?”

This reference was registered as Industrial Dispute No. 41 of 1992 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the Petitioner read as follows.—The Petitioner's claim for reinstatement in service is based on the fact that the 1st Respondent recruited and employed the petitioner w.e.f. 14-4-1988. He was initially recruited and employed w.e.f. 14-4-1988 to 31-8-1989 continuously for 385 days except for some days in some months and for the entire month of September, 1988 which was due to cessation of workers by the Department. From September 1988 to August 1989 he worked for 316 days. The petitioner submits that after absorbing several mazdoors, the Telecom Department issued orders dt. 7-11-1989 to grant temporary status to those who could not be absorbed in the regular establishment for want of vacancies. It is thus clear that continuous one year service as casual labourers in the Telecom Department entitles from to temporary status pending their absorption in the regular establishment of the Department, according to their turn in the seniority list of casual mazdoors of a recruitment unit and for preparing the seniority list the Director General issued separate orders. The Petitioner therefore prays that this Hon'ble Tribunal may be pleased to hold and declare that his retrenchment is illegal, and to direct the Respondents herein to reinstatement him in service with full back wages, continuity of service, protection of his seniority and all other benefits which are incidental to such reinstatement and to pass the Award.

3. The brief facts of the counter filed by the Respondent read as follows.—It is submitted that the reference itself is illegal for the reason that the services of the petitioner were never terminated as he was only working on casual basis and the casual mazdoors were offered work as and when the same is available. That the Department engages casual mazdoors as and when temporary works are taken up for laying

ground cables, construction of over head alignments are taken up. As soon as the work is over, the employment of the casual mazdoor comes to an end. That in the case of casual mazdoors, work is not continuous and their engagement depends upon the availability of work averment that the petitioner employed w.e.f. 4-4-88 to 31-8-89 continuously for 385 days is not true. The petitioner worked from March 1989 to August 1989 only that is 165 days. The judgements cited does not apply to the present facts as the petitioner worked for 6 months only. The petitioner was informed clearly at the time of his initial appointment as casual mazdoor that he was engaged for works of casual nature and as and when such casual work are completed, he will be disengaged from the muster rolls. That there is a procedure for recruitment of regular employees in the Department the claim of the petitioner that he should be made a permanent employee is not maintainable. Disengagement will not amount to termination and such disengagement is automation the case of casual mazdoors. The contention of the petitioner that he is entitled for regularisation is not relevant for purpose of this case and the same is beyond the scope of reference made by the Government. It is therefore prayed that this Hon'ble Tribunal may be pleased to pass an Award holding that the petitioner is not entitled to any relief.

4. The point for adjudication is whether the Respondent is justified in terminating the services of Sri S. Venkataramana, Ex-Casual Mazdoors w.e.f. 1-9-1989 ?

5. No oral or documentary evidence has been adduced by both the parties.

6. In this case none of the parties adduced any evidence nor filed any documents to substantiate their case. This Tribunal is left with no other alternative but decide the case on the claims statement and counter filed in this Tribunal. A reading of the claim and counter would indicate that the work of casual mazdoor is not continuous and purely depending upon the availability of work. The casual mazdoors are engaged for laying the cables, erecting poles etc. Here in this case the petitioner workman was engaged as a Casual mazdoor on daily wages depending upon the availability of work. The work of the casual mazdoors comes to an end as and when the work is over. The allegation that the petitioner worked continuously for 385 days during the period from 14-4-1988 to 31-8-1989. But as I mentioned supra none of the parties have filed any documents to show that the petitioner workman has worked for 385 days during the above mentioned relevant period. So when once the petitioner has not proved that he has worked for 385 days, the question of making him entitle for reinstatement or giving protection does not arise. Nextly the allegation of the Petitioner was he was terminated from service and that the termination is in violation of Section 25-F of the I.D. Act. I find there is no termination of service much less retrenchment of service. The question of complying with the provisions of Section 25-F of the I.D. Act does not arise since the petitioner workmen was engaged as casual mazdoor on daily wages. They are engaged purely for discharging casual nature of work. It is further seen that the Respondent is a Government of India Department

and it has got procedure for engaging regular employees. Hence I find that the petitioner workman is not entitled for absorption or for employment under the Respondent-Telecom. It is seen that the petitioner was informed clearly at the time of his initial appointment as casual mazdoor that he was engaged for works of casual nature and as and when such casual works are completed, he will be disengaged from the muster rolls. On a consideration of the facts and circumstances, I am of the clear view that the Petitioner-workman is not entitled for reinstatement into service or any other benefits.

7. In the result, the Management of Sub-Divisional Office (Rural) Telecom, Adilabad is justified in terminating the services of Sri S. Venkataramana, Ex-Casual Mazdoor w.e.f. 1-9-1989. The concerned workman is not entitled to any relief.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 30th day of May, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I
Appendix of Evidence.

NIL

नई दिल्ली, 23 जून, 1994

का. आ. 1584.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुकरण में, केन्द्रीय सरकार टेलेकॉम, महबूबनगर के प्रबन्धन के संवत् नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण हैदराबाद के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 22-6-94 को प्राप्त हुआ था।

[संख्या एन - 40012/81/91 - आई आर (सीयू) (पीटी)]
के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 23rd July, 1994

S.O. 1584.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Telecom, Mahboobnagar and their workmen, which was received by the Central Government on 22-6-94.

[No. L-40012/81/91-IR(DU) (Pt.)]
K. V. B. UNNY, Desk Officer.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT
HYDERABAD

PRESENT :—

Shr Y. Venkatachalam, M.A., B.L., Industrial
Tribunal-I.

Dated 30th May, 1994

Industrial Dispute No. 67 of 1991

1491 GI/94—8.

BETWEEN :—

Rafiq Ahmed S/o Late Md. Ibrahim
about 27 years Casual Mazdoor.

... PETITIONER

AND

1. The Sub-Divisional Officer,
Phones, Mahboobnagar-509 001.

2. The Telecom Divisional Engineer,
Mahboobnagar-509 050. ... RESPONDENT

APPEARANCES :—

Sri G. Suryanarayana and P. Bhasker,
Advocates for the Petitioner.

M/s. M. Panduranaga Rao, B. G. Ravinder
Reddy & M. V. Rama Rao, Advocates for the
Respondents.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-40012/81/91-IR(DU), dated 18-11-1991 referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the management of Telecom and their workmen to this Tribunal for adjudication :

"Whether the management of Sub-Divisional Office, Telecom, Mahboobnagar, A.P. is justified in terminating the services of Sri Rafiq Ahmed w.e.f. 1-4-1986? If not, what relief the workman concerned is entitled to?"

This reference was registered as Industrial Dispute No. 67 of 1991 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the Petitioner read as follows. The Petitioner's claim of reinstatement in service is based on the fact that the 2nd Respondent recruited and continuously employed the petitioner as Casual Mazdoor for 536 days during the period from 23-4-1985 to March 1986 but he was not given paid weekly offs nor granted paid Telegraph Holidays but retrenched thereafter on the ground that he was recruited after 30-3-1985 contrary to the orders of the Director General, P & T New Delhi prohibiting any fresh recruitment and employment of casual mazdoors. The petitioner was not given notice nor paid wages as per the mandatory provisions of Section 25-F of the I.D. Act. The petitioner submits that after absorbing several mazdoors the Telecom Department, issued order dt. 7-11-1989 to grant temporary status to those who could not be absorbed on the regular establishment for want of vacancies. It is thus clear that continuous one year service as Casual Labourers in the Telecom Department entitles them to temporary status pending their absorption in the regular establishment of the Department, according to their name in the seniority list of casual mazdoors of a recruitment unit and for preparing the seniority list the Director General issued separate orders. The petitioner prays that this Hon'ble Tribunal may be pleased to hold and declare that his retrenchment is illegal and direct the Respondent to reinstate him in service with full back wages, continuity of service,

protection of his seniority and all other benefits which are incidental to such reinstatement and to pass the Award accordingly.

3. The brief facts of the counterfiled by the Respondent read as follows: It is submitted that the petitioner was engaged as casual mazdoor on daily wages depending upon the availability of work. Casual mazdoors are engaged for laying the cables erecting poles etc. The work of the casual mazdoor comes to an end as and when the work is over. The work of the casual mazdoor is not continuous and purely depending upon the availability of work. The allegation that the petitioner worked continuously for 536 days during the period from 23-4-1984 to March 1986 is not correct. He was engaged as and when the work is available. In case of casual mazdoors there is no question of termination. Casual Mazdoors will be discontinued as and when the work is over. It is submitted that there is no termination of service much less retrenchment of service. Section 24-F of the I.D. Act is not applicable to the facts and circumstances of this case. The Respondent is a Government of India Department and it has got procedure for engaging regular employees. The casual mazdoors are meant purely for discharging casual nature of work and they have no right to whatsoever nature to seek for absorption or for employment under the Respondent. The various judgements cited by the petitioner in the claim statement are not relevant and are not applicable to the facts of this case. The fact that the petitioner is unable to give the date of retrenchment itself shows that there is no retrenchment. The petitioner was not eligible for granting of temporary status as he was not engaged prior to 30-3-1985. It is prayed that this Hon'ble Tribunal may be pleased to pass an Award holding that the petitioner is not entitled to any relief.

4. The point for adjudication is whether the Management of Sub-Divisional Office, Telecom, Mahboobnagar, A.P. is justified in terminating the service of Sri Rafiq Ahmed w.e.f. 1-4-1986?

5. W.W1 was examined on behalf of the Petitioner and marked Exs. W1 to W4. M. W1 was examined on behalf of the Respondent and no documents were marked on its side.

6. W.W. 1 is Rafiq Ahmed. He deposed that he joined the Department in April 1984. He was engaged as casual mazdoor and entrusted the work in the office. He was engaged upto March 1986. He worked for a total of 536 days. He was not given paid weekly offs nor granted paid telegraph holidays. He was not given any reasons for termination except that there are some orders from the higher authorities. After March 1986 he used to go to the office requesting then for work. But he was not given any work. The work he used to perform while he was engaged as casual labourer was still being continued. There are junior to him are still being engaged. One of them is Mr. Niranjana. He prays this Hon'ble Court, to reinstate into service with continuity of service and back wages and other attendant benefits.

7. M.W. 1 is S. M. Vali. He deposed that he is working at Mahboobnagar as Asst. Engineer, Telecom from August 1992 and he is giving evidence on

the basis of records. Casual mazdoors are engaged for temporary works of trench digging, cable laying etc. This work is not continuous and permanent. The petitioner worked under the Respondent from 1984 to 1986. Even during this period he was not engaged continuously. The petitioner was temporarily disengaged after April 1986 due to non-availability of work. But later on new works are taken, the petitioner did not approach them therefore they could not engage him. The petitioner never came to the Respondent till today asking for work. His predecessor has informed him that the petitioner was informed before his engagement as casual mazdoor that his employment is only for specific work and as soon as the work for which he was engaged is completed, his employment comes to an end.

8. At the very outset it is seen that Casual mazdoors are engaged for temporary works of trenching, digging, cable laying etc. and that this work is not continuous and permanent. The petitioner in question as Casual Mazdoor on daily wage depending upon the availability of work. The petitioner was engaged as and when the work was available. It is seen that the case of Casual mazdoors there is no question of termination. The allegation that the petitioner was terminated from service and that the termination is in violation of Section 25-F of the I.D. Act is not correct. It is in the evidence of M. W1 who worked as Asst. Engineer, Telecom. He mentioned that the petitioner was temporarily disengaged after April 1986 due to non-availability of work but later on new works are taken the petitioner did not approach them therefore they could not engage him. It is further mentioned that the petitioner never came to the Respondent till day, asking for work. It is further in the evidence of M.W. 1 that his predecessor has informed him that the petitioner was informed before his engagement as casual mazdoor that his employment is only for specific work and as soon as the work for which he was engaged is completed, his employment comes to an end. It is further seen that the Respondent is a Government of India Department and it has got procedure for engaging regular employees. The casual mazdoors are meant purely for discharging casual nature of work and the petitioner has no right to seek for absorption for employment. It is also pertinent to note that the petitioner was unable to give the date of retrenchment, this itself shows that there is no retrenchment. On a consideration of the facts and circumstances of the case, I am of the clear view that the petitioner is not entitled to be reinstated into service and also not eligible for granting of temporary status as he was not engaged prior to 30-3-1985.

9. In the result, the Management of Sub-Divisional Office, Telecom, Mahboobnagar, A.P. is justified in terminating the services of Sri Rafiq Ahmed w.e.f. 1-4-1986. The petitioner-workman is not entitled to any relief.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 30th day of May, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence

Witnesses Examined for

Petitioner/Workman :

W.W1.—Rafiq Ahmed.

Witnesses Examined for

Respondent/Management :

M.W1.—S. M. Vali.

Documents marked for the Petitioner/Workmen

Ex. W1—21-11-1990—Complaint given to the Regl. Labour Commissioner U/Sec. 2-A against retrenchment from service.

Ex. W2—9-5-1991—Parawise remarks submitted by the Telecom, Dist. Engineer, Mahboobnagar to Ex. W1.

Ex. W3—Minutes of Conciliation Meeting held on 31-5-1991.

Ex. W4—6-6-1991.—O.C. of the Rejoinder filed by the workman to Ex. W3.

Documents marked for the Respondent/Management
NIL

नई दिल्ली, 23 जून, 1991

का.अ. 1585—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, केन्द्रीय विमानन के प्रबन्धकों के संघर्ष नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, गुवाहाटी के पंचायत को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-6-94 को प्राप्त हुआ था।

[संख्या पुन-42012/161/9 - आर्डीआर (डी.यु.) (पार्ट)]
के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 23rd June, 1994

S.O. 1585.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Government Industrial Tribunal, Guwahati as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Kendriya Vidyalaya, Doomdoma (Assam) and their workmen, which was received by the Central Government on 22-6-94.

[No. L-42012/161/92-IR(DU) (P.)]

K. V. B. UNNY, Desk Officer.

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL : GUWAHATI,
ASSAM

REFERENCE NO. 5(c) OF 1993

PRESENT :

Shri J. C. Kalita,
Presiding Officer,
Industrial Tribunal, Guwahati.

In the matter of an Industrial Dispute.

BETWEEN :

The Management of Kendriya Vidyalaya,
A.R.C., Doomdoma-736159.

AND

Their workman.—Sri N. C. Sutradhar, G. N. B.
Road, P. O. Doomdoma, Tinsukia, Assam.

APPEARANCES :

NONE : For the Management.

Sri G. Das, Advocate : For the Workman.

AWARD

This Reference arising out of the Central Government Notification No. L-42012/161/92-IR(DU) dated 13-5-93 relates to the dispute indicated in the Schedule below :

"Whether the action of the management of Kendriya Vidyalaya, Doomdoma (Assam) in terminating the services of Shri N. C. Sutradhar, Group 'D' employee w.e.f. 17-1-91 is justified? If not, what relief he is entitled to?"

On receipt of notice workman appeared and filed his written statement. Management failed to submit written statement inspite of several notices. The case is posted for hearing.

On the date of hearing the workman was present with his counsel. Management is absent even after service of due notice on them, just to show that the management is not at all interested with the proceeding of the reference.

The workman examined himself and pressed three documents into service. His case is that he was appointed as peon in the Kendriya Vidyalaya at Doomdoma after due selection in the interview. He joined in service on 1-11-88 and continued till 17-1-91. On this unfortunate date (17-1-91) his service was terminated by the Principal of he said School. He then filed appeal before the Asst. Commissioner, Kendriya Vidyalaya Sangathan, Silchar through the Principal, but got no relief. Then he brought the matter into the notice of the Regional Labour Commissioner, Guwahati who ultimately transferred the matter to Assistant Labour Commissioner, Dibrugarh for settlement. In the conciliation proceeding before the Asstt. Labour Commissioner, Dibrugarh the Principal appeared and prayed time to file objection. But defaulted the appearance in six subsequent dates. On its failure the Labour Commissioner referred the matter to the Central Government, and in return, the Central Government by its order No. L-42012/161/92-IR(DU) dt. 13-5-93 referred the dispute to this Tribunal for adjudication. But the management did not turn up as a result of which the reference has been taken ex parte.

Exhibit 3 is the termination letter. It does not speak on what ground the workman was discharged from service after continuous service for 2 years 2 months 16 days. The workman stated on oath that no show cause notice was served on him, and no enquiry was held to give him any opportunity to defend.

The workman further stated that he was also asked to render duties in the residence of the Principal to which he gracefully obliged to satisfy the Principal. In attending the domestic work he was sometime unpunctual. Because of his unpunctuality the Principal got annoyed and served notice on him to show better performance. Though he was given 15 days time to

show better performance, the 2nd notice was sent after five days of issuing the 1st notice on 10-12-90.

It is now proved that the workman was discharged from service after continuous service of 2 years 2 months 16 days without levelling any specific charge of misconduct, dereliction of duty or insubordination and that two without holding any enquiry and without show cause notice to him. The action of the Management in terminating the workman from service is illegal and violative of the Principle of Natural Justice. The Principal acted arbitrarily with bias attitude and the innocent workman became the victim of unfair labour practice.

The learned counsel for the workman raised a pertinent point that the default in appearance by the management may be under wrong notice that he is not a workman as defined under Section 2(s) of the Industrial Dispute Act. In this connection Mr. Das the learned counsel for the workman referred the decision in A.I.R. 1988 S.C. part II page 1700 wherein it was held that the School is an Industry but the teachers of the school are not workman as defined in Section 2(s) of the Act. Here the person involved is not the teacher but a peon of the school. As such it can be rightly held that the peon of the Kendriya Vidyalaya is a workman and he is entitled to the reliefs extended by the Industrial Dispute Act, 1947.

As a result it is held *ex parte* that the order of dismissal of Shri Niresh Ch. Suradhar from the post of Peon of Kendriya Vidyalaya, Doondoma, is bad in law and is not sustainable. The order is set aside and he be reinstated with the post he held on 17-1-91 with back pays and other allowances admissible to him. The period from the date of termination to the date of reinstatement be treated as on duty.

I give this Award on this 8th day of June, 1994 a Guwahati under my hand and seal.

J. C. KALITA, Presiding Officer

नई दिल्ली, 23 जून, 1994

आ. 1586—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में केन्द्रीय सरकार टेलेकॉम, महबूबनगर के प्रबन्धन के संबंध में नियोजकों और उनके कार्यकर्ताओं के बीच अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करता है, जो केन्द्रीय सरकार को 22-9-94 को प्राप्त हुआ था।

[संख्या एल-40012/80/91-आई प्रार (डी. यू.) (पार्ट)]
के. बी. बी. जम्मी, डेस्क अधिकारी

New Delhi, the 23rd June, 1994

S.O. 1586.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Telecom,

Mahaboobnagar and their workmen, which was received by the Central Government on 22-6-1994.

[No. L-40012/80/91-IR(DU) (Pt.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Sri Y. Venkatachalam, M.A., B.L.,
Industrial Tribunal-I

Dated : 30th day of May, 1994

INDUSTRIAL DISPUTE NO. 66 of 1991

BETWEEN

A. Narasimhulu, S/o A. Balaiah about 21 years,
Casual Mazdoor. Petitioner

AND

1. The Sub-Divisional Officer,
Phones, Mahaboobnagar-509001.
2. The Divisional Engineer,
Telecom, Mahaboobnagar-509050.

. Respondents

APPEARANCES :

S/Sri C. Survanarayana and P. Bhaskar,
Advocates for the Petitioner.

S/Sri M. Panduranga Rao, B. G. Ravinder Reddy,
Advocates for the Respondents.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-40012/80/91-IR(DU), dated 13/19-11-1991 referred the following disputes under Section 10(1)(d) (2A) of the Industrial Disputes Act, 1947 between the management of Telecom and their workmen to this Tribunal for adjudication :

"Whether the management of Sub-Divisional Officer, Telecom, Mahaboobnagar (A.P.) is justified in terminating the services of Sri A. Narasimhulu w.e.f. 1-8-90? If not, to what relief the workman concerned is entitled to?"

This reference is registered as Industrial Dispute No. 66 of 1991 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the petitioner is read as follows :—The petitioner's claim for reinstatement in service is based on the fact that the 2nd Respondent recruited and continuously employed the petitioner as casual mazdoor for 274 days during the period from 1-3-1989 to 30-11-1989. But he was not given any paid weekly offs. He was retrenched thereafter from service on the ground that he was recruited after 30-3-1985 contrary to the order of the Director-General, P&T, New Delhi prohibiting any fresh recruitment and employment of casual mazdoors. The petitioner was not given notice nor paid wages as per the mandatory provisions of

Section 25-F of the I.D. Act. The petitioner submits that after absorbing several mazdoors the Telecom Department issued orders dt. 7-11-1989 to grant temporary status to those who could not be absorbed in the regular establishment for want of vacancies. It is thus clear that continuous one year service as Casual labourers in the Telecom Department entitles them to temporary status pending their absorption in the regular establishment of the Department, according to their turn in the seniority list of Casual Mazdoors of a recruitment unit and for preparing the seniority list the Director General issued separate orders. The petitioner prays that this Hon'ble Tribunal may be pleased to hold and declare that his retrenchment is illegal and to direct the Respondents herein to reinstate him in service with full back wages, continuity of service, protection of his seniority and all other benefits which are consequential and/or incidental to such reinstatement and to pass the Award.

3. The brief facts of the counter filed by the Respondent read as follows :—The petitioner was engaged as casual mazdoor on daily wages depending upon the availability of work. The casual mazdoors are engaged for laying the cables, erecting poles etc. The work of the casual mazdoor comes to an end as and when the work is over. The work of the casual mazdoor is not continuous and purely depends upon the availability of work. The allegation that the petitioner worked continuously for 274 days during the period from 1-3-1989 to 30-11-1989 is not correct. He was engaged as an when the work was available. That in case of casual mazdoors, there is no question of termination. Casual mazdoors will be discontinued as and when the work is over. Therefore the allegation that the petitioner was terminated from service and what the termination is in violation of Section 25-F of the I.D. Act is not correct. That there is no termination of service much less re-trenchment of service. The Respondent is a Government of India Department and it has got procedure for engaging regular employees. The various judgements cited by the petitioner in the claim statement are not relevant. The petitioner is unable to give the date of retrenchment itself shows that there is no retrenchment. The petitioner was not eligible for granting of temporary status as he was not engaged prior to 30-3-1985. It is therefore prayed that this Hon'ble Tribunal may be pleased to pass an Award holding that the petitioner is not entitled to any relief.

4. The point for adjudication is whether the management of Sub-Divisional Officer, Telecom, Mahaboobnagar (A.P.) is justified in terminating the services of Sri A. Narasimhulu w.e.f. 1-8-1990?

5. No oral or documentary evidence have been adduced by both the parties.

6. In this case, the petitioner workman claims that he was recruited and continuously employed as Casual Mazdoor for 274 days during the period from 1-3-1989 to 30-11-1989, that while in service he was retrenched thereafter from service on that ground that he was recruited after 30-3-1985. On the other hand the contention of the Respondent that the petitioner was engaged as Casual mazdoor on daily wages depending upon the availability of work. Further it is seen that none of the parties filed any documents. This Tribunal is left with no other alternative but to

decide the case on the claims statement and counter filed before this Tribunal. A reading of the claims and counter would indicate that the work of casual mazdoor is not continuous and purely depending upon the availability of work. The casual mazdoors are engaged for laying the cables, erecting poles etc. Here in this case the petitioner workman was engaged as a Casual mazdoor on daily wages depending upon the availability of work. The work of the casual mazdoors comes to an end as and when the work is over. The allegation that the petitioner worked continuously for 274 days during the period from 1-3-1989 to 30-11-1989. But as I mentioned earlier none of the parties have filed any documents to show that the petitioner workmen has worked for 274 days during the abovementioned relevant period. So when once the petitioner has not filed any documents to prove that he has worked for 274 days the question of making him entitle for reinstatement or giving protection does not arise. Nextly the allegation of the petitioner that he was terminated from service and that the termination is in violation of Section 25-F of the I.D. Act. I find there is no termination of service much less retrenchment of service. The question of complying with the provisions of Section 25-F of the I.D. Act does not arise since the Petitioner workman was engaged as casual mazdoor on daily wages. They are engaged purely for discharging casual nature of work. It is further seen that the Respondent is a Government of India Department and it has got procedure for engaging regular employees. Hence I find that the Petitioner workman is not entitled for absorption or for employment under the Respondent Telecom. On a consideration of the facts and circumstances, I am of the clear view that the Respondent workman is not entitled for reinstatement into service or any other benefits.

7. In the result, the Management of Sub-Divisional Officer, Telecom, Mahaboobnagar (A.P.) is justified in terminating the service of Sri A. Narasimhulu w.e.f. 1-8-1990. The concerned workman is not entitled to any relief.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 30th day of May, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence.

NIL

नई दिल्ली, 14 जून, 1994

का. आ. 1587.—आयोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सिगारेटी कोलरिज कम्पनी लि. के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट आयोगिक विवाद में आयोगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-6-94 को प्राप्त हुआ था।

[संख्या एल-22012/403/90—आई आर (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 14th June, 1994

S.O. 1587.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad (A.P.) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Singareni Collieries Company Ltd. and their workmen, which was received by the Central Government on the 13-6-94.

[No. L-22012(403)90-IR(C. II)]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT
HYDERABAD

PRESENT :—

Shri Y. Venkatachalam, M.A. B.L., Industrial
Tribunal-I.

Dated : 13th day of May, 1994

Industrial Dispute No. 3 of 1991

BETWEEN :

Singareni Coal Mines Karmika
Sangh, Ramavaram 507 118
Khamman Dist. rep. by its Vice
President. ... PETITIONER

AND

M/s. Singareni Collieries Co. Ltd.,
represented by its Managing Director
... RESPONDENT

APPEARANCES :

M/s. G. Bikshpathy, G. Vidyasagar,
V. Vishwanatham, N. Vinesh Rai and Giri
Krishna, Advocates for the Petitioner.

M/s. K. Srinivasa Murthy, G. Sudha and M.
Ananthasen Rao, Advocates for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-22012(403)90-IR(C. II), dt. 7-2-1991 referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the management of Singareni Collieries Company Limited, Kothagudem and their workmen to this Tribunal for adjudication :

"Whether the action of the management of M/s. Singareni Collieries Company Limited, Kothagudem in dismissing Sri Burgula Padma Rao, Clerk Gr. II from service with effect from 11-3-1989 without reverting him back to his original post of General Mazdoor is justified? If not, to what relief the workman entitled?"

This reference was registered as Industrial Dispute No. 3 of 1991 and notice were issued to both the parties.

2. The brief facts of the claim statement filed by the Petitioner-workman read as follows :—It is submitted that Sri Burgula Padma Rao was appointed in the Company in 1981 as General Mazdoor in

VK. Timber Yard, Kothagudem. The workman was not a Graduate at the time of entry into service. The workman in effort to acquire his graduation, enrolled in School of Correspondence Courses, Andhra University, Waltair for B.A. Course. He appeared the examination of B.A. and pass certificate was issued. In pursuance of Circular dt. 23-2-1988 the workman has applied for the post of Clerk Grade-II vide his application dt. 1-3-1988. Along with Memorandum of Marks of Degree course and Degree Certificate. He was issued with office order dt. 16-5-1988 appointing him as clerk Grade II and posted to General Managers's Office, Kothagudem. While so the workman was issued with charge sheet dt. 7-12-1988 alleging that he submitted a false degree certificate for getting himself appointed as Clerk Grade-II. Immediately he contacted Andhra University for enquiring about genuineness of the Certificates issued by them. Even before he could get the reply, an enquiry into the charge was ordered. The enquiry was vitiated by various irregularities. The workman was dismissed from service by an order dt. 9-3-1989 without furnishing him copy of the enquiry report and show cause notice. After the dismissal order, the workman made representation dt. 27-5-1989 to reconsider his case sympathetically and revert him to the original post of General Mazdoor. The same was rejected by an order dt. 4-9-1989. It is submitted that the action of the Respondent in dismissing the workman from service w.c.f. 11-3-1989 is illegal and unjustified.

3. The brief facts of the counter filed by the Respondent-management read as follows:— It is true that the workman in dispute Sri B. Padma Rao was appointed in the Respondent as General Mazdoor on 17-3-1981 at VK Timber yard, Kothagudem. At the time of initial appointment General Mazdoor Sri B. Padma Rao's qualification was S.S.C. only. In response to the Circular dt. 23-2-1988 the workman submitted an application dt. 1-3-1988 for the post of Clerk Grade II along with a Memo of Marks of B.A. Degree and Certificate. The said certificate indicates that he passed B.A. Degree from the Andhra University in December, 1985. In view of appointment letter given on 16-5-1988 the petitioner was discharging the duties of Clerk Grade II. It may be noticed normally whenever an appointment is given, the educational qualifications and antecedents are verified for their genuineness in the first three months. Thus the Respondent addressed a letter to Controller of Examinations, Andhra University on 30-7-1988/2-8-1988 enclosing the list of candidates with their certificate numbers and requested the University authorities to verify genuineness of the Certificate as the candidates have submitted the Degree Certificate that they studied and obtained degrees from Andhra University. In reply to this letter the Assistant Controller of Examinations, Andhra University wrote a letter on 22-10-1988 of the Respondent giving the verification particulars. In that list the Asstt. Controller of Examinations intimated that the workman in dispute, Sri B. Padma Rao, who gave registration No. 19783 May, 1985 the Certificate was not genuine certificate as per their records. Accordingly the Disciplinary Authority issued the charge sheet on 7-12-1988 under Company's Standing Orders stating that the Degree Certificate submitted by him along with his applica-

tion is take one and workman in dispute secured the post of Clerk grade II by dishonest means and violated the Standing Orders 16(2) and 16(7) and Rule 3 of the Conduct & Discipline Rules and he was called upon to submit his explanation. Though the charge sheet was received by the workman in dispute he has chosen not to submit his explanation. After the enquiry officer forwarded the proceedings and his findings, management looked into the enquiry proceedings, report and the past record of the employee and applied its mind and passed the dismissal order on 9-3-1989 considering the gravity of misconduct committed by the employee. There are no merits in the petitioner's case and the petitioner is not entitled for the relief prayed i.e. to declare the orders passed on 11-3-1989 as illegal and arbitrary and consequently to pass an Award directing the Company to reinstate the workman into service with back wages, continuity of service and other attendant benefits etc. There are not the cases where the Court can interfere with the punishment as the employee is the cause for submitting the fake certificate. In view of what has been stated above, this Hon'ble Tribunal may be pleased to dismiss the claim petition.

4. The point for adjudication is whether the action of the Management in dismissing Sri Burgula Padmarao, Clerk Gr. II from service w.e.f. 11-3-1989 without reverting him back to his original post of General Mazdoor is justified or not ?

5. Before going into the merits of the case, this Tribunal had decided the validity of the domestic enquiry as a preliminary issue and this Tribunal passed an order holding that the domestic enquiry conducted in this case is not vitiated for any reasons.

6. In this case, the petitioner was issued with the charge-sheet dt. 7-12-1988 alleging that the petitioner submitted a false Degree Certificate for getting himself appointed as Clerk-Grade II. No sooner the petitioner received the charge sheet, he immediately contacted the Andhra University for enquiring about genuineness of the Certificate issued by them. It is the case of the petitioner that before he could reply from the Andhra University, the Respondent-Management proceeded with the domestic enquiry. Of course the petitioner participated in the domestic enquiry. Finally the petitioner-workman was dismissed from service by an order dt. 9-3-1989 without furnishing him copy of the enquiry report and the show cause notice. The version of the Respondent-Management is that at the time of initial appointment as General Mazdoor, Sri B. Padma Rao's qualification was S.S.C. only, that in response to the Circular dt. 23-2-1988 the workman, submitted an application dt. 1-3-1988 for the post of Clerk Grade II alongwith a Memo of Marks of B.A. Degree and Certificates, that said certificate indicates that he passed B.A. Degree from the Andhra University in December 1985, subsequently the petitioner workman was appointed as Clerk Grade II, that the Respondent addressed a letter to the Controller of Examinations, Andhra University on 30-7-1988/2-8-1988 enclosing the list of candidates with their certificate, numbers and requested the University authorities to verify genuineness of the certificate as the candidates have submitted the Degree Certificates that they studied and obtained degree from Andhra

University, that finally the Respondent received a reply from the Assistant Controller of Examinations, Andhra University vide letter dt. 22-10-1988 in that list the Assistant Controller of Examinations intimated that the workman Sri B. Padma Rao who gave registration No. 10793 May 1985 the certificate was not genuine certificate as per their records. When once the respondent found that the Degree Certificate submitted by Sri Padma Rao is not genuine, the Respondent was right in issuing charge sheet, conducting domestic enquiry and finally dismissing him from service. The Petitioner-Workman has not even whispered that the Degree Certificate submitted by him is a genuine one and instead of telling the truth, he made a representation to revert him back to the old post of General Mazdoor. By this it is clear that the Petitioner-workman submitted a fake certificate in order to get the post of Clerk Grade II. So it is clear that the Petitioner-workman played a mischief and illegally he got the post of Clerk Grade II. Hence I find that the petitioner-workman does not deserve to be posted as Clerk Grade II and the Respondent-Management was right in dismissing the petitioner-workman from service after conducting the domestic enquiry and other procedure. I find that there is much weight in the merits of the Respondent-Management. On a consideration of the all the facts and circumstances, the Petitioner is not entitled for the relief prayed i.e. to declare the orders passed on 11-3-1989 as illegal and arbitrary.

7. In the result, the action of the Management of M/s. Singareni Collieries Company Limited, Kothagudem in dismissing Sri Burgula Padmarao, Clerk Grade II from service with effect from 11-3-1989 without reverting him back to his original post of General Mazdoor is justified. The concerned workman is not entitled to any relief.

Award passed accordingly.

Typed to my dictation given under my hand and the seal of this Tribunal, this the 13th day of May, 1994.

RAJA LAL, Desk Officer
Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence :

Witnesses Examined on behalf of Respondent-Management :	Witnesses Examined on behalf of Petitioner-Workman :
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M. WI P. Hari Gopal

NIL

Documents marked for the Respondent-Management :

- Ex. M1 17-1-89.—Copy of the appointment letter of Enquiry Officer.
- Ex. M2 7-12-88.—Charge Sheet.
- Ex. M3 —Enquiry Proceedings.
- Ex. M4 23-2-88.—Circular No. P(PM)4/3208/574-recruitment clerks.
- Ex. M5 1-3-88.—Application for the post of Grade II Clerks.
- Ex. M6 2-12-85.—Degree Certificate of Sri Padma Rao.

- Ex. M7 28-6-83.—Official memorandum of marks of I year.
- Ex. M8 27-6-84.—Official memorandum of marks of II Year.
- Ex. M9 9-7-85.—Official memorandum of marks of III Year.
- Ex. M10 16-5-88.—Appointment order issued to B. Padma Rao & 2 others.
- Ex. M11 11-6-88.—Office Order No. P/PM-4/3208/1832 in Partial modification.
- Ex. 12 21-10-88.—Letter from Asst. Controller of Exam-I, A.U. Waltair.
- Ex. M13 25-1-89.—Application of Sri Padma Rao.
- Ex. M14 11-9-82.—Official marks memo of entrance examination of Sri B. Padma Rao.
- Ex. M15 28-6-83.—Official memo of marks of Degree first year of B. Padma Rao.
- Ex. M16 27-6-84.—Official memo of marks of Degree IInd year of B. Padma Rao.
- Ex. M17 9-7-85.—Official Memo of marks of degree IIIrd year of B. Padma Rao.
- Ex. M18 27-1-89.—Application of Sri B. Padma Rao.
- Ex. M19 26-4-85.—Copy of Bank challan regarding payment of fees to Andhra University.
- Ex. M20 7-7-89.—Enquiry Report.
- Ex. M21 9-3-89.—Copy of the dismissal order.

नई दिल्ली, 14 जून, 1994

का. आ. 1588.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसेस सिंगरेनी कोलीरिज कम्पनी लि. के प्रबन्धन के संवद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण हैदराबाद के पंचवट को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-6-94 को प्राप्त हुआ था।

[संख्या एल-22012/247/91-आई आर (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 14th June, 1994

S.O. 1588.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad (A.P.) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Singareni Collieries Company Ltd. and their workmen, which was received by the Central Government on the 13-6-94.

[No. L-22012/247/91-IR(C. II)]

RAJA LAL, Desk Officer.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I.

Dated : 17th day of May, 1994

INDUSTRIAL DISPUTE NO. 57 QF 1991.

BETWEEN :

The General Secretary,
Singareni Collieries Workers'
Union (AITUC), Kothagudem,
Khammam District (A.P.). .. Petitioner.

AND

The Chief Personal Manager,
M/s. Singareni Collieries
Company Limited, Kothagudem,
Khammam District (A.P.). .. Respondent.

APPEARANCES :

M/s. K. Srinivasa Murthy, G. Sudha and M. Meera, Advocates for the Respondent.

None.—for the Petitioner.

AWARD

The Government of India, Ministry of Labour by its Order No. L-22012/247/91-IR(C. II) dt. 7-10-1991 referred the following dispute under Section 10(1)(d) (2A) of the Industrial Disputes Act, 1947 between the Management of M/s. Singareni Collieries Company Limited, Kothagudem and S.C.W. Union (AITUC) to this Tribunal for adjudication :

"Whether the demand of Singareni Collieries Workers Union (AITUC), Kothagudem for enhancement of Stitching charges of uniforms in conjunction with the prevailing market rates is justified? If so, to what relief the workman are entitled?"

This reference was registered as Industrial Dispute No. 57 of 1991 and notices were issued to both the parties.

2. Notice dt. 21-10-1991 was sent to the petitioner to appear before this Tribunal on 16-11-1991 at 11.00 A.M. and for filing claim statement with relevant documents. On 16-11-1991 the Petitioner called absent and set ex parte. The Respondent Management filed counter on 7-3-1992. In the absence of claim statement and the petitioner not appearing before this Tribunal and finding that the Petitioner is not interested in pursuing the case, this Tribunal is left with no other alternative but to terminate the reference. Hence this reference is terminated.

Award passed.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 17th day of May, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I.

Appendix of Evidence.

NIL.

नई दिल्ली, 16 जून, 1994

का. आ. 1589.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय खाद्य निगम के प्रबन्धन के संबंध में नियोक्तों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण गुवाहाटी (असम) के पंचायत को प्रकाशित करती है जो केन्द्रीय सरकार को 15-6-94 को प्राप्त हुआ था।

[संख्या एन-22012/278/92-आई आर (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 16th June, 1994

S.O. 1589.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Guwahati (Assam) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Food Corporation of India and their workmen, which was received by the Central Government on the 15-6-1994.

[No. L-22012/278/92-IR(C. II)]

RAJA LAL, Desk Officer.

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL GUWAHATI:
ASSAM

REFERENCE NO. 3(C) OF 1993

PRESENT :

Shri J. C. Kalita,
Presiding Officer,
Industrial Tribunal, Guwahati.
In the matter of an Industrial Dispute.

BETWEEN

The Management of Food Corporation of India,
District Manager F.C.I. Ulubari,
Ashram Road, Guwahati.

AND

Shri Paban Borah,
Their workman at the Office of the Asstt.
Manager (Pay) F.C.I. at Tezpur.
District Sonitpur.

AWARD

The Government of India Ministry of Labour, New Delhi by a Notification No. L-22012/278/F/92-IR (C. II) Dated 14-1-93 refers an Industrial Dispute, between the Management of Food Corporation of India and their workman Sri Paban Borah for adjudication with a copy to the respective parties. On receipt of the reference a case was registered and notices were issued to both the parties who on their appearance before this Tribunal, filed their written statements together with few documents.

The reference relates to the following issue :—

“Whether the action of the management of Food Corporation of India in relation to their pay 1491 GI/94—9.

office at Tezpur in not regularising the services of Shri Paban Borah, Casual Worker w.e.f. 2-7-86 is justified? If not, to what relief is the workman concerned entitled to?”

The workman in his written statement contended that the Asstt. Manager (Pay) F.C.I. at Tezpur engaged him as the casual worker with effect from 1-5-83 and continued to serve as such till the end of June, 1986. He was paid wages like the other casual labourer. As a casual worker he was to discharge duties from morning to evening on all working days of every month, even on some times on holidays and Sundays as and when his Superior Officers asked him to attend. Suddenly, the management without giving him any prior notice, engaged him to perform the duties of Safaiwalla-cum-water carrier with effect from 3-7-86 with a fixed wage of Rs. 50 p.m. though he works for the whole day. The workman then filed representation for regularisation of his service, but received no consideration. The wages so paid falls far below the rate of minimum wages fixed by the Government of Assam under their minimum wages notification for such type of employment. Then the workmen approached the Secretary of the Engineering and General Workers Union affiliated to INTUC, Assam, Paltanbazar, Guwahati—8 for regularisation of his service with full monetary benefits as unskilled regular worker of F.C.I.

The management in their written statement stated that the workman is not entitled to any benefit as he is not a workman within the definition of the workman, as such the proceeding is not maintainable. He works casually on part time basis for few minutes in a day for filling the filters of drinking water in the office having 8 to 10 persons. The work entrusted to him can be completed within a few minutes. As the work was incidental in nature he was paid Rs. 50 per month. He being not a workman as defined in the Section 2(s) of the Act is not entitled to the reliefs claimed.

The workman examined himself who was discharged after cross-examination and also proved few documents in to service. Management adduced no evidence.

Mr. Sarmah, the learned counsel for the management laid not so much emphasis in submitting the case as to the question raised that Sri Paban Bora is not a workman as defined in the Act, but forcefully contended that more supply of water to fill up the filter in the office is not an act for regularisation. A person to be workman within the meaning of the definition must be one employed in an industry for hire or reserved. His terms of employment must be express or implied. As to nature of work required to be done by him it may be either manual, technical, clerical or supervisory.

In “Dharandhara Chemical Works” Supreme Court held that a person employed on a daily wage or was paid by the job is a workman if the employer retains the power of controlling the work. Here the workmen deposed that he had to work from morning to evening in all working days and performed the duties of supplying water to staff and the person

attending the office in connection with the business of the F.C.I. He is to serve tea to the staff and to clean the tables and to put the official seals on the papers produced by the Agents of F.C.I., who come to take delivery of the goods. In return management failed to reshift their burden by tederling any positive reliable evidence to this effect. It is accepted principle of law that the persons doing manual work in the residence of the officers of the Company and if their names are in the pay-roll and receives salary from the company, are workmen within the meaning of Section 2(s) of the Act. Even the part time workers and casual workers are also declared to be workmen.

Exhibit 1 is the certificate issues by the District Manager (Pay) F.C.I. Tezpur to the effect that the workman Sri Paban Bora served as casual labour at his office since July, 1983. It appears from the case, record that he was suddenly engaged as sufaiwalla-cum-water carrier with effect from 3-7-86 at a fixed rate of Rs. 50 per month when the workman is all along demanding his regularisation as full time worker. Sudden change of nomenclature of the work with a fixed rate of Rs. 50 per month without giving him any opportunity was uncalled for and unreasonable. Mr. Sarmah, the learned counsel for the management could not give a satisfactory reply thereof. In my opinion, the decision of the management to engage him as a sufaiwalla was to deprive him from regularisation as full time worker to show that he is not a daily rated workmen, and to prove that he has not completed 3 years of service as casual labour. It is nothing but an attempted guise of an unfair labour practice.

Mr. Sarmah further submitted that the workman failed to produce the appointment letter before the Tribunal. When his engagement as casual labour since 1983 and then as safaiwalla w.e.f. 3-7-86 is not denied, for the sake of fairness and equity the management could have extended help by filing the copies of the appointment letters from their office file, but no help was extnded. In my opinion, management cannot absolved its responsibility by printing its finger towards the workman.

What I find from the written statement of the workman is that he approached the Secretary of the Engineering and General workers Union of INTUC, Assam, Paltanbazar to move the Labour Commissioner, Guwahati for conciliation. This is neither denied nor challenged by the Management. As such the submission of the learned counsel for the Management that he is not a member of the Table Union holds no good.

In support of the contention of the workman his counsel relied on the following decisions : A.I.R. S.C. 737, A.I.R. 1964 S.C. 806 and 1994 G.L.R. (Vol.1) 130. Considering the facts and circumstances of the present case in the light of the said decisions I am of the considered opinion that the workman, first as casual labour and then as safaiwalla, performed the duties of a full time worker in all the working days during the office hours, and had to oblige his bosses/seniors to work in their residence on Sundays and holidays when his service is required/demanded.

His service as a workman was directly enjoyed on utilised by the staff of the Pay Office a Tezpur for which the said office all along moved the District Manager, F.C.I. Guwahati for regularisation of his service. All these make me to hold that this workman rendered his valuable service to the Management as casual labour or safaiwalla continuously since 1983 uptil now. Such a long period of service at a rate below the rate of minimum wages, is unsound, unreasonable and unrealistic and such type of unfair labour practice should be condemned.

In the light of the above discussion I must say that the action of the management of Food Corporation of India in not regularising the service of Sri Paban Borah as full time worker w.e.f. 2-7-86 is not justified. It is, therefore, ordered that the workman be regularised w.e.f. 2-7-86 as regular worker with all full back wages like other workers of similar category. He is also entitled to other benefits extended to other workers of some category.

I give this Award on this 1st day of June, 1994 at Guwahati under my hand and seal.

Dated : 1-6-1994.

J. C. KALITA, Presiding Officer.

नई दिल्ली, 24 जून, 1994

का. आ. 1590.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंगरेनी कोलियरीज कं. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण हैदराबाद के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 23-6-94 को प्राप्त हुआ था।

[संख्या एन-22012/220/88-डी-IV (बी)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 24th June, 1994

S.O. 1590.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Singareni Collieries Co. Ltd. and their workmen, which was received by the Central Government on the 23-6-94.

[No. L-22012/220/88-D. IV (B)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I.

Dated : 23rd day of May, 1994

INDUSTRIAL DISPUTE NO. 16 OF 1993

BETWEEN

Syed Khaza Pasha . . . Petitioner

AND

The General Manager,
Area-I, RG. Division,
Singareni Collieries Company Limited,
Godavarikhani. . . Respondent

APPEARANCES :

M/s. G. Bikshapathy, G. Vidyasagar, N. Vinesh
Raj and G. Ravi Mohan, Advocates for the
Petitioner.

M/s. K. Srinivasa Murthy and G. Sudha, Ad-
vocates for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-22012/220/88-D. IV(B), dt. 29-3-1993 referred the following dispute under Section 10(1)(d)(2A) of the Industrial disputes Act, 1947 between the Management of Singareni Collieries Company Limited, Area-I, Ramagundam Division and their workmen to this Tribunal for adjudication :

“Whether the action of the management of M/s. Singareni Collieries Co. Ltd., Area-I, Ramagundam Division, in denying continuity of service and pay protection to Sri Syed Khaza Pasha, Fitter, is legal and justified? If not, to what relief the concerned workman is entitled to?”

This reference has been registered as Industrial Dispute No. 16 of 1993 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the Petitioner-workman is read as follows :—It is submitted that the concerned workman was appointed as Mazdoor in Category-I on 23-11-1964 in the Respondent Company. He was promoted to the post of Category IV in 1966 and he was further promoted to Category V w.e.f. 1-6-1976. On 14-12-1983 he was working in the night shift in 6th Incline, Godavarikhani and he met with an accident, as he slipped down while going into the Mine. The Superintendent of Area Hospital vide letter dt. 12-7-1984 referred the case to the Superintendent, Nizam Orthopaedics Hospital, Hyderabad. The workman was treated as in-patient from 16-7-1984 to 9-8-1984 and he was surgically operated upon. The Medical Officer and Neuro Surgeon, vide Certificate dt. 9-8-1984 advised rest for one month and fit for duties. Without following the advice of the specialised Doctor of NIMS, Hyderabad, the Area Medical Board, Singareni Collieries Company Limited, vide letter dt. 23-11-1984 declared the workman unfit to work as Fitter underground. The Respondent without considering whether the Petitioner is entitled to work on surface, erroneously passed an order dt. 17-3-1985 terminating the services of the Petitioner with immediate effect on the ground that the Medical Board declared unfit for further service in the company. The Dy. CPM(RG. 1) vide letter No. P. R.G. 1/22G/2248 dt. 1-8-1985 sought for advice by the Superintendent, Area Hospital whether the petitioner is fit to work as Fitter at 18 M.W. Power House, Godavarikhani. The Area Hospital Superinten-

dent has advised that the petitioner is unfit to work in the under ground and he is fit to work in the surface. Thereafter the General Manager, R.G. I vide office order dt. 15-9-1985 appointed the workman as Fitter, Cat. IV w.e.f. 16-9-1985 for a period of two months and that he will stand automatically terminated on 16-11-1985 whereas the concerned workman was drawing Rs. 35.00 as his basic pay Cat. V at the time of termination of his services. Again the petitioner was issued with office order dt. 29-11-1985 appointing for two months in Cat. IV w.e.f. 1-12-1985 to 31-1-1986. Still again he was appointed vide office order dt. 9-2-1986 w.e.f. 10-2-1986 to 9-4-1986. The petitioner was appointed in the permanent post as Fitter, Cat. IV w.e.f. 15-4-1986 at Power House, Ramagundam. The services of the petitioner were confirmed by an order dt. 25-7-1986. The petitioner was promoted as Fitter, Cat. V w.e.f. 1-3-1989 by an order dt. 29-6-1989. The action of the Respondent in terminating the services of the workman w.e.f. 17-3-1985 is wholly illegal. The Respondent failed to see that the petitioner was declared unfit only for underground and he is eligible to be continued on surface. Thus the order dt. 17-3-1985 is without application of mind. The petitioner is entitled to be continued in service without the order of termination in Category V in which post he was working since 1-6-1976. The petitioner was called for written test and interview for Cat. VI in April 1984 he was selected. Item No. 3 of the Circular dt. 15-6-1990 the past cases of the employees in which alternative employment were given are also to be considered in the light of the Settlement dt. 12-3-1990 if they are continuing on the rolls as on the date of the Circular. The Management by an order dt. 21-4-1988 treated the period of absence from 17-3-1985 to 10-9-1985 due to medical unfitness and also intermittent breaks during temporary appointments upto 14-4-1986 treating as leave on loss of pay for continuity of service for purposes of gratuity. The Management should have considered the above period for continuity of service for the purpose of seniority, promotion, pay fixation and other consequential benefits, as the termination itself is illegal. It is submitted that juniors to the Petitioner who were working in Category V as on the date of termination of the concerned workman have been promoted to Cat. VI and further promotion to 'C' Grade chargehand and the concerned workman is entitled to be treated on par with his juniors but for his termination. The workman has only sought for re-employment on surface and in any event the said letter cannot be looked into for the purpose of denying continuity of service, pay protection etc. The said letter was taken under duress and agony of unemployment. Therefore, the said letter cannot be treated as waiver on part of the workman for claiming continuity of service and pay protection. The petitioner is fit for resuming duty as per the Medical Certificate issued by the Specialist Doctor. However, he was kept under sick list upto 17-3-1985 and terminated from service which is wholly arbitrary and unjust. It is therefore prayed that the Hon'ble Court may be pleased to hold that the action of the management in not giving the continuity of service and pay protection to the concerned workman is illegal and arbitrary and consequently pass an award directing the management to protect the pay of the concerned workman Syed Khaza Pasha, Fitter w.e.f.

17-3-1985 with continuity of service and consequential benefits including promotion etc. and pass Award as deemed fit and proper.

3. The brief facts of the counter filed by the Respondent Management is read as follows.—It is true that the workman while working in GDK VI Incline on 14-12-1983 in 3rd shift he met with minor accident as he slipped and fell down and got injury to the right thumb. Petitioner was given treatment in Colliery Hospital from 15-12-1983 to 22-12-1983 and he was declared fit to resume duty. Once again he reported stating that he was not keeping good health which resulted his case has been referred to Nizam's Institute of Medical Sciences, Hyderabad by letter dt. 12-7-1984 and the workman in dispute was treated there as inpatient from 16-7-1984 to 9-8-1984 and he had undergone operation viz., Laminectomy and Discectomy for PVD L4-5, L5, S1. Post operation treatment was also taken which workman in dispute had undergone has nothing to do with the accident occurred to him in the Mine. The Nizam's Hospital clearly certified by their letter dt. 9-8-1984 stating 'rest till one month' and 'fit to resume duty from date of discharge, i.e. 9-9-1984'. The Medical Board on 23-11-1984 examined the workman and they found in their examination that the workman was unfit to work as Fitter underground and issued letter dt. 23-11-1984. The workman in dispute submitted in writing that he was prepared to work in Category IV wages and he was appointed afresh at 18 M.W. Power House, Godavari Khan on 11-9-1985 on an initial basic pay of Cat. IV and subsequently he was confirmed on 15-7-1986. It may be noticed that though fresh appointment was given because of the Representation made by the Petitioner Union and workman in dispute as special case management has granted continuity of service treating the intervening period i.e. from the date of unfitness to the date of reappointment as leave on loss of pay only for the purpose of gratuity. If the claim of the petitioner was justified, he ought to have raised a dispute and agitated the issue in 1984 itself. It may be noticed that he is not entitled for pay protection and so far as continuity of service is, has been given. The workman himself agreed to work in lower category as he had undergone operation and acquired some inability to discharge his duties to the full extent. Though the Medical Board placed some restrictions to provide him alternative employment, the management, provided him alternative employment. So question of discharging him for unfitness cannot be treated as illegal termination, on the other hand, he was given alternative job which is not in continuation of his earlier employment in Cat. V in which he was working in 1985. So question of giving seniority or considering him for promotion taking his previous service prior to medical unfitness in 1985 does not arise. The Management is right in rejecting the workman's claim for continuity of service etc., as he has been provided alternative employment in 1985 and everything has been settled in 1985 and there is no question of reopening his case and giving certain benefits does not arise. It may be noticed that only after the petitioner was declared fit for employment on surface under certain condition management provided him the said post. This is a fresh appointment. The Certificates issued by any Doctor, how efficient and renowned he may be, cannot be taken by the Com-

pany as Fitness Certificate which is contrary to Mines Rules. Only because of health conditions he was declared as unfit to work as Fitter underground. There are no merits in the petitioner's case. In view of the above mentioned facts this Hon'ble Tribunal may be pleased to dismiss the claim petition and the petitioner is not entitled for continuity of service and consequential benefits including promotion etc.,

4. The point for adjudication is whether the action of the Respondent in denying continuity of service and pay protection to Sri Syed Khaja Pasha, Fitter is legal and justified ?

5. No oral or documentary evidence have been adduced by both the parties.

6. The case of the Petitioner workman that the concerned workman was appointed as Mazdoor in Category I on 23-11-1964, he was promoted to the post of Category IV in 1966, further promoted to Cat. V w.e.f. 1-6-1976, that on 14-12-1983 he was working in the night shift in 6th Incline, Godavari Khan and he met with an accident as he slipped down while going to the Mine, the Superintendent of Area Hospital referred the case to the Superintendent, Nizam Orthopaedic Hospital, Hyderabad, the workman was treated as inpatient from 16-7-1984 to 9-8-1984, the Medical Officer and Neuro Surgeon advised rest for one month and fit for duty on 9-8-1984, that without following the advice of the specialised Doctor of NIMS Hyderabad the Area Medical Board, Singareni Collieries Company Limited declared the workman unfit to work as Fitter underground vide letter dt. 23-11-1984, the management without considering whether the petitioner is entitled to work on surface, erroneously passed an order dt. 17-3-1985 terminating the services of the petitioner on the ground that the Medical Board declared unfit for further service in the Company. Thereafter the workman made representations and was reappointed for some periods. The petitioner made several representations to the management during the period from the date of termination till reappointment on 13-4-86 as continuous for all purposes including seniority, pay protection and other terminal benefits etc. The contention of the Respondent on the other hand is that the operation which workman in dispute had undergone has nothing to do with the accident occurred to him in the mine, that when the petitioner came back with fitness certificate, according to the Mines Rules the management referred him to the Company's Hospital that the Medical Board on 23-11-1984 examined the workman and they found in their examination that the workman was unfit to work as Fitter underground and issued letter dt. 23-11-1984, that the petitioner stated that he was not in a position to work either underground or on surface as he was very weak; that was the reason he was not given any job, that later after he gained strength and made representation to the management for alternative employment on humanitarian grounds, because of his own health conditions, management informed him that they will be giving a light job if he was prepared to do.

7. Since both the parties have not adduced any evidence nor argued on the matter. This Tribunal has no other alternative except giving a finding from the claim statement and counter filed by the parties. There is no dispute with regard to the appointment

of the petitioner-workman and the treatment taken in the Hospitals. The only prayer of the petitioner-workman is that the Management by an order dated 21-4-1988 treated the period of absence from 17-3-1985 to 10-9-85 due to medical unfitness and also intermittent breaks during temporary appointments upto 14-4-1986 treating as leave on loss of pay for continuity of service for purposes of gratuity that the Management should have considered the above period for continuity of service for the purpose of seniority, promotion, pay fixation and other consequential benefits as the termination itself is illegal. After going through the claim statement and counter filed by the Management, I find that the action of the management in not giving the continuity of service and pay protection to the petitioner workman is arbitrary and unjust. It is seen that the petitioner-workman has only sought for re-employment on surface and in any event the letter dt. 9-9-1985 cannot be looked into for the purpose of denying continuity of service, pay protection etc.,

8. In the result, the action of the Management of M/s. Singareni Collieries Company Limited, Area-I, Ramagundam Division, in denying continuity of service and pay protection to Sri Syed Khaja Pasha, Fitter is not legal and unjustified. The Respondent-Management is directed to protect they pay of the concerned workman w.e.f. 17-3-1985 with continuity of service and consequential benefits including promotion, etc.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 23rd day of May, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I
Appendix of Evidence
NIL

नई दिल्ली, 24 जून, 1994

का. आ. 1591.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण, में केन्द्रीय सरकार, सिंगरेनी कोलराइज कं. लि. के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण हैदराबाद के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 23-6-94 को प्राप्त हुआ था।

[संख्या एल-21011(14)/85-डी-IIIबी/आई आर (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 24th June, 1994

S.O. 1591.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Singareni Collieries Co. Ltd. and their workmen, which was received by the Central Government on the 23-6-94.

[No. I-21011]14/85-D.IIIB.[IR(C.II)]

RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

Present :—Sri Y. Venkatachalam, M. A., B. L.,
Industrial Tribunal-I.

Dated 30th day of May, 1994

INDUSTRIAL DISPUTE NO. 31 of 1990

Between :

The General Secretary,
Singareni Collieries Trammers &
Munshies Association, Godavarikhani.

.. PETITIONER

AND

The Management of Singareni Collieries
Company Limited, Godavarikhani (Area-I)

.. RESPONDENT.

Appearances :—

S/Sri V. Venkataramana and V. Srinivas,
Advocates for the Petitioner.

M/s. Srinivasa Murthy and G. Sudha,
Advocates for the Respondent.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-21011(14)/85-D.IIIB/IR (C.II), dt. 7-5-1990 referred the following dispute under Section 10(1) (d) (2A) of the Industrial Disputes Act, 1947 between the management of Singareni Collieries Company Limited, Godavarikhani (Area-I) and their workmen to this Tribunal for adjudication :

“Whether the action of the management of M/s. S. C. Co. Ltd., Godavarikhani (Area-I) in utilising services of Trammers and Helpers to rope splicers is justified. If not, to what relief the workmen concerned are entitled?”

This reference was registered as Industrial Dispute No. 31 of 1990 and notices were issued to both the parties.

2. The Petitioner Union filed their claim statement on 4-2-1991 while the Respondent-Management filed their counter on 20-3-1991. While the matter stood thus, the Petitioner did not appear before this Tribunal till 7-4-1993. On 7-4-1993 the docket sheet read thus : petitioner is called absent. There is no representation on his side. The workman is taking time from 21-5-1991 i.e. for the last about two years. Hence no evidence for the petitioner. Then for Respondents evidence posted to 10-5-1993. From 10-5-1993 many adjournments were given to the Respondent. On 3-5-1994 I. A. No. 160/93 filed by the Respondent is allowed. Therefore the matter is reopened on the Respondents side and posted for the evidence of Respondent to 10-5-1994. On 10-5-1994 it is posted to this day for the evidence of Respondent. Once the evidence of Respondent was closed on a petition filed by the Respondent i.e. I.A. 160/93 this matter was reopened on the Respondent's side. Even then Respondent asked time. It is an old matter of 1990. Hence the evidence of Respondent closed. For arguments it was posted to 11-5-1994.

From 11-5-1994 it was posted to 23-5-1994. On 23-5-1994 it is posted to this day for hearing the arguments of both sides. Both sides did not argue the matter. It is an old matter of 1990. Hence the arguments of both sides were closed, and for Award it is posted to 30-5-1994.

3. From the above facts and circumstances of the case, it is clear that both the parties are not interested in pursuing the matter. Even though many adjournments were given but both the parties did not avail the opportunity of deciding the case. This Tribunal is left with no other alternative but to terminate the reference. Hence the reference is terminated.

Award passed.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 30th day of May, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I
Appendix of Evidence.

NIL

नई दिल्ली, 24 जून, 1994

का. आ. 1592.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंगरेनी कोलोरीज कं. लि. के प्रबन्धकों के संवद्ध नियोजकों और उनके कर्मचारियों के बीच अनबन्ध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-6-94 को प्राप्त हुआ था।

[संख्या एल-22012/97/89—आई आर (सी-II)]

राजा लाल, डेस्क अधिकारी

New Delhi, the 24th June, 1994

S.O. 1592.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Singareni Collieries Co. Ltd. and their workmen, which was received by the Central Government on the 23-6-94.

[No. L-22012/97/89-JR(C.II)]
RAJA LAL, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT
HYDERABAD

PRESENT :

Sri Y. Venkatachalam, M.A., B.L.,
Industrial Tribunal-I.

Dated, 20th day of May, 1994

INDUSTRIAL DISPUTE NO. 14 OF 1991

BETWEEN :

The Vice President,
S.C.M.K. Sangh (BMS),
Bellampalli.

.. Petitioner

AND

The General Manager,
Singareni Collieries,
Company Limited,
Bellampalli.

... Respondent

APPEARANCES :

Shri R. N. Reddy, Advocate for the Petitioner.

M/s. K. Srinivasa Murthy & Sudha, M. Ananthas-
sen Rao, S. Suresh, Advocate for the Res-
pondent.

AWARD

The Government of India, Ministry of Labour by its Order No. L-22012/97/89-IR(C.II), dt. 29-4-1991 referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the Management of Singareni Collieries Company Limited, Bellampalli and their workmen to this Tribunal for adjudication :

“Whether the action of the management of Singareni Collieries Company Limited, Bellampalli in denying to restore the sanctioned increments to the 23 Fillers (As per list enclosed) transferred to time rated jobs, is legal and justified? If not, then what relief the concerned workmen are entitled to?”

This reference was registered as Industrial Dispute No. 14 of 1991 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the Petitioner Union read as follows :—It is submitted that the 23 workmen mentioned in the list enclosed to the reference were working as Coal Fillers (Piece rated) in M.V.K. 2 Mines and that they were transferred to the time rated jobs with effect from 1-9-83, as per their Circulars dt. 30-9-1978. But to the surprise and shock of the workmen concerned their basic pays were reduced in June 1984 without giving any notice to the workmen and without even passing any order, and the workmen requested for restoration of their basic pays but in vain. It is submitted that the management before the Conciliation Officer stated that the 23 workmen were given benefit of increments as per the circular dt. 17-9-1979 and the same were taken away because of the Circular dt. 18-4-1984. That the Circular dt. 17-9-1979 clearly stated to give benefits of increments to the piece rated workmen on their transfer to time rated jobs. That Clause 3-11.0 of the NCWA III stated about the Special Piece rate allowance to be given to the Coal Fillers in the manner the time rated workmen are granted annual increments. And that it does not speak any thing about the incremental benefits to the piece rated workmen transferred to the time rated jobs. Therefore it is submitted the circular dt. 18-4-84 is totally illegal and unjust. That on the subject of allowing increments to the time rated personnel who were transferred from piece rated jobs, the Circular dt. 17-9-1979 holds filed and must be followed by the Respondents and any deviation is unreasonable. That the reduction of the basic pays of the 23 workmen by taking away the increments without notice amounts to violation of Section 9A of Industrial Dis-

putes Act and hence liable to set aside and thereby the 23 workmen are entitled for the restoration of the basic pays. The petitioners pray that this Hon'ble Court may be pleased to declare the action of the management of Singareni Collieries Company Limited is denying to restore the sanctioned increments to the 23 Fillers transferred to time rated job is illegal and in consequence direct the Respondent to restore the basic pays of the 23 workmen and pass award accordingly.

3. The brief facts of the counter filed by the Respondent read as follows :—All the 23 workmen mentioned in the list annexed to the reference were working as Coal Fillers-piece rated at MVK-2 Incline of Bellampalli Area. They themselves have opted for time rated jobs. That was the reason they were transferred from piece rated to time rated jobs with effect from 1-9-1983. As on the date of transferring of the 23 employees from piece rated to time rated circulars dt. 17-9-1979 and 13/19-2-1981 were in vogue, the same circulars were implemented and their salaries were fixed. The coal fillers who were brought from piece-rate to time rate category were permitted to have one extra increment in their respective categories with effect from 1-4-1980 if they were appointed in time rate jobs before 1-4-1980. It was also made clear that this extra increment is not applicable to the fillers appointed to the time rated jobs between 1-1-1979 and 17-9-1979, while so fixing their wages the Respondent realised that some employees basic pay had fallen short of and the difference of wages were paid and to some of the employees excess wages have been paid more than what had been provided based on circular dated 18-4-1984 issued, consequent upon implementation of NCWA-III that excess paid has been recovered. This cannot be treated as change of service condition and so the question of taking away the increments without notice amounts violation of Section 9A of the I.D. Act does not arise and the employees Union and the Petitioner Union in particular, are fully aware of the same. So question of restoring the basic wage basing in circulars dated 17-9-1979 and 13/19-2-1981 in this case does not arise as the basic fixation had been during the period when negotiations were going on and when the management did not know when N.C.W.A. III will come into effect and when implementation instructions will be circulated. The main motive of giving increment was also to fix the basic pay at that time only, i.e. before conclusion of N.C.W.A. III. The extra increment to those employees, as per Circular dated 13/19-2-1981, is not applicable as the N.C.W.A. III has come into force from 1-1-1983 with retrospective effect. The petitioner is not entitled for any extra increment as per the N.C.W.A. III. So question of deduction or denying or restoring the sanctioned increment does not arise. In view of the above mentioned facts this Hon'ble Tribunal may be pleased to dismiss the claim petition.

4. The point for adjudication is whether the action of the Respondent in denying to restore the sanctioned increments to the Fillers transferred to time rated jobs, is legal and justified

5. W.W1 and W.W2 were examined on behalf of the Petitioner-Union and marked Exs. W1 to W8. No oral evidence has been adduced on behalf of the Respondent-Management but marked Exs. M1 to M5

6. W.W1 is P. Gattaiah. He deposed in brief that he is the Vice President of the Petitioner Union of Bellampalli Zone. He raised the dispute through Ex. W1 dated 16-1-1988. He knows the concerned workmen in this dispute. The concerned workmen were given the benefit of Company Circular dtd. 30-9-78 and 17-9-1979 and their basics were fixed after adding the due increments. Later in 1984 their basic were reduced and the increments given earlier were withdrawn. Later he raised the dispute before the Conciliation Officer through Ex. W1. Before the Conciliation Officer, the Management filed their views dt. 23-8-1988 under Ex. W4. In the said views, the management stated that the basics were reduced in terms of their Circular dt. 18-4-1984 the xerox copy of the said circular is Ex. W5. In the said circular the Management mentioned that according to Clause No. 3.11 of the National Coal Wage Agreement No. III the said Circular was issued. Xerox copy of the extract of Clause 3.11 of N.C.W.A. III is Ex. W6. All the concerned workmen were not served with any notice prior to reducing their basics in 1984. No where in the Wage Board agreement (Ex. W6) the management was given power to reduce the basics of the concerned workmen. They pray this Hon'ble Court to restore the basic pays of the concerned workmen in this dispute.

7. W.W2 is Shaik Tajuddin. He deposed that he is the concerned workman in this dispute. His name is at Sl. No. 1 in the reference. All the 22 workmen of the reference worked along with in M.V.K. 2 Mine known to him. But one person died who is Elka Satyanarayan, Sl. No. 19 of the reference. Ex. W7 is the authorisation given by all the persons involved in the reference to depose him in this I.D. No. 14/91, before this Tribunal. He has been appointed in 1978 as Badli worker. He was promoted as Coal Filler in 1979. Now he worked as acting Trammer. He got promotion in 1983 as Trammer Regular. He was given increments in trammer post but for local filler service, his basic pay in April 1984 were paid Rs. 28.90 ps. In the month of May 1984 the management reduced the basic pay to Rs. 26.50 ps. At the time of reducing the basic pay, no notice was given. The Management reduced the basic pays of all other 22 workmen. Ex. W8 is the statement showing their reducing the increments. He prays this Hon'ble Tribunal to restore his basic pay.

8. The allegation of the Petitioner-Union that 23 workmen were working as Coal Fillers and they were transferred to the time rated jobs with effect from 1-9-1983, that their basic pays were fixed duly adding increments vide circulars dt. 17-9-1979 and 30-9-78, that in June 1984 their basic pays were reduced without giving any notice to the workmen and without even passing any order.

9. The contention of the Respondent Management is that as on the date of transferring of the 23 employees from piece-rated to time rated under circulars dt. 17-9-1979 and 13/19-2-1981 were in vogue, the same circulars were implemented and their salaries were fixed, that the National Coal Wage Agreement III has come into force w.e.f. 1-1-1983 and implementation of the Wage revision was done on 11-11-1983 that the guide lines with regard to fixation of pay in respect of Coal Fillers drafted to Time rated jobs in N.C.A.W. III were issued under Circular dt. 18-4-1984 basing upon the said circular the

basic wages of Coal Fillers drafted to time rate jobs on or after 1-1-1983 have been revised as per the above circular, that consequent upon implementation of N.C.W.A. III that excess paid has been recovered that it cannot be treated as change of service condition and so the question of taking away the increments without notice amounts violation of Section 9A of the I.D. Act does not arise.

10. At the very outset I would like to mention that the claim of the Petitioner Union that the basic pays of the concerned workman were reduced in June 1984 without giving any notice to the workmen and without passing any order. A perusal of Ex. W6 which is a copy of the National Coal Wage Agreement III i.e. the Memorandum of Agreement dt. 11-11-1983 would indicate that no where in the said agreement the Respondent-Management was given power to reduce the basic of the workmen. A perusal of all the records filed before this Tribunal, would show that no notice was issued by the Respondent-Management to the concerned workmen in regard to reducing the basic pay of the above concerned workmen. Of course there is no dispute the concerned workmen were promoted to time rated jobs. The Circular dt. 17-9-1979 clearly indicates to give benefits of increments to the piece rated workmen on their transfer to time rated jobs whereas the circular dt. 18-4-1984 brought out on total misunderstanding of the Clause No. 3.11.0 of the National Coal Wage Agreement III. A reading of Clause No. 3-11-0 of the N.C.W.A. III states about the special piece rate allowance to be given to the Coal Fillers in the manner the time rated workmen are granted annual increments. That Clause 3.11.0 does not speak anything about the incremental benefits to the piece rated workmen transferred to the time rated jobs. Hence I find that the Circular No. P. 49/4117/676, dt. 18-4-84 is totally illegal and unjust, and that the Circular No. P. 49/3696/3472, dt. 17-9-79 must be followed by the Respondent in toto. Whenever the Respondent-Management reduces basic pay, a notice under Section 9A of the I.D. Act must be issued to the concerned workmen but in this case the Management has violated Section 9A of the I.D. Act and hence I find that reduction of the Basic pays of the 23 workmen concerned without notice is unjustified and is liable to be set aside, and the above said workmen are entitled for the restoration of the basic pay.

11. In the result, the action of the Management of Singareni Collieries Company Limited, Bellampalli, in denying to restore the sanctioned increments to the 23 Fillers (as per the list enclosed) transferred to time rated jobs is not legal and the concerned workmen are entitled for the restoration of their basic pays.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 20th day of May, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence

Witnesses Examined for
the Petitioner/Workman :
W.W1 P. Gattaiiah
W.W2 Shaik Thajuddin

Witnesses Examined for
the Respondent/Management

NIL

Document marked for the Petitioner/Workmen :

Ex.W1 Letter written by the petitioner union to the
16-1-88 ALC(C) Mancherial.

Ex.W2 Xerox copy of Circular No. P49/2782/
30-9-78 VIII/3890, implementation of Wage Board.

Ex.W3 Xerox copy of Circular No. P49/3696/3472
17-9-79 with regard to implementation of NCWA-
II-Reg.

Ex.W4 Views of the Management before Concilia-
23-8-88 tion Officer

Ex.W5 Xerox copy of the Circular P49/4117/676
18-4-84 Reg. to fillers appointed the transferred to
Wage rated job on or after 1-1-83 i.e. after
implementation of wage structure NCWA,
III Fixation.

Ex.W6 Xerox Copy of NCWA-III extract.

Ex.W7 Authorisation given by all the other work-
men W.W2 to depose in this I.D. as witness.

Ex.W8 Statement showing the reduction of basic
pays.

Documents marked for the Management :

Ex.M1 Xerox circulars issued with regard to the im-
17-9-79 plementation of NCWA-II.

Ex.M2 Xerox copy of the Circular in pursuance of
13-2-81 strike notice—Reg. to sanction of incre-
ment.

Ex.M3 Xerox copy of NCWA-I, JBCCI recom-
mendations.

Ex.M4 Xerox copy of Circular after NCWA-III.
18-4-84

Ex.M5 Xerox copy of NCWA-III.

नई दिल्ली, 15 जून, 1994

का. आ. 1593.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, कन्द्रीय सरकार, विजया बैंक के प्रबंधन के संकट नियोजकों और उनके कर्मचारों के बीच, अनबन्ध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचयट को प्रकाशित करती है, जो कन्द्रीय सरकार को 14-6-94 को प्राप्त हुआ था ।

[संख्या एल-12012/161/93-आई आर (बी-2)]

वी. के. शर्मा, डेस्क अधिकारी

New Delhi, the 15th June, 1994

S.O. 1593.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal Madras as shown in the Annexure in the Industrial dispute between the employers in relation to the management of Vipay Bank

and their workmen, which was received by the Central Government on 14-6-94.

[No. L-12012/161/93-IR(B-II)]
V. K. SHARMA, Desk Officer
ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL
NADU, MADRAS

Friday, the 15th day of April, 1994

PRESENT :

Thiru K. Sampath Kumaran, B.A.B.L., Industrial Tribunal.

Industrial Dispute 103/93

[In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Dispute Act, 1947 between the workman and the Management of Vijaya Bank, Madras].

BETWEEN :

The Workman represented by
The Regional Secretary,
Vijaya Bank Workers' Organisation,
283, Pycrofts Road,
Triplicane,
Madras - 600 005.

AND

The Asst. General Manager,
Vijaya Bank,
Regional Office, Dugar Towers,
123, Marshalls Road,
Egmore, Madras-600 008.

Reference: Order No. L-12012/161/93-IR(D-II),
dated 4-11-93, Ministry of Labour, Government of India, New Delhi.

This dispute coming on this day for final disposal in the presence of Trl. P. B. Krishnamurthy and M. Chidambaram, Advocates appearing for the Management, upon persuing the reference and other connected papers on record and the workman being absent, this Tribunal passed the following.

AWARD

This dispute between the workman and the Management of Vijaya Bank. Madras arises out of a reference by Ministry of Labour, Government of India, New Delhi for adjudication of the following issue :

"Whether the action of the Management of Vijaya Bank in stopping 4 increments permanently in respect of Shri C. Tamilselvan is justified ? If not, to what relief, he is entitled to ?"

Claim statement not filed.

Mr. P. B. Krishnamurthi filed vakalat for respondent.

Further Time for petitioner's claim statement refused.

Petitioner called absent. Industrial dispute dismissed for default. No costs.

Dated, this the -5th day of April, 1994

THIRU K. SAMPATH KUMAR, Industrial Tribunal
1491 GI/94—10

नई दिल्ली, 22 जून, 1994

का. आ. 1594.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडीकेट बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 20-6-94 को प्राप्त हुआ था ।

[संख्या एन-12012/127/92-आई. आर. (बी.-2)]

वी. के. शर्मा डेस्क अधिकारी

New Delhi, the 22nd June, 1994

S.O. 1594.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Syndicate Bank and their workmen, which was received by the Central Government on 20-6-1994.

[No. L-12012/127/92-IR(B-II)]

V. K. SHARMA, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT
HYDERABAD

PRESENT :

Sri Y. Venkatachalam, M.A., B.L., Industrial Tribunal-I.

Dated : 20th day of May, 1994

Industrial Dispute No. 76 of 1992

BETWEEN :

R. Babu Prasad, S/o R. Anandarao,
Hindu aged 46 years, Special Asst.
Syndicate Bank, residing at Salipet,
2nd Line Arundalpet 1st Line end.

...PETITIONER

AND

The Deputy General Manager,
I. R. Cell, Syndicate Bank,
Zonal Office, Somajiguda,
Hyderabad-500 482.

APPEARANCES :

Sri B. G. Ravinder Reddy, Advocate for the
Petitioner.

Sri E. Madan Mohan Rao, Advocate for the
Respondent.

AWARD

The Government of India, Ministry of Labour, by its Order No. L-12012/127/92-IR(B.II). dt. 10-8-1992 referred the following dispute under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 between the Management of Syndicate Bank

and their workmen to this Tribunal for adjudication:

“Whether the action of the Management of Syndicate Bank, Zonal Office, Vijayawada (now shifted to Hyderabad) in dismissing Sri R. Baba Prasad, Special Assistant, Syndicate Bank, Ongole Branch, w.c.f. 29-6-91 is justified? If not, to what relief the workman entitled to?”

This reference was registered as Industrial Dispute No. 76 of 1992 and notices were issued to both the parties.

2. The brief facts of the claim statement filed by the Petitioner-workman read as follows:—The Petitioner workman has joined in service of the Respondent-Bank on 8th April, 1969 as a Clerk and promoted to Special Assistant (AWARD Staff) and while he was working as such at Ongole Branch, in 1989 he was issued a charge sheet dt. 28-11-1989 for his alleged misconduct namely “doing acts prejudicial to the interests of the Bank” vide Clause 19.5(j) of the Bipartite Settlement committed “gross misconduct”. The allegation of the Respondent are that some irregularities were committed in respect of the grant of loans to M/s. Sri Ungarala Koteswarao (L.D. A/c No. 478/88) and Sri M. Sreenivasa Rao (Staff Member) of Ongole Branch, in respect of (L.D. A/c. No. 357/88) and the workman has authorised the loans over and above he permissible extents from time to time and has not properly maintained the Loan Accounts etc. and that the aforesaid persons are not having sufficient deposits with the Bank for the grant of loan etc. He is not responsible for the alleged misconduct and has not committed any act of misconduct or irregularity as alleged by the Respondent. The Respondent placed the petitioner under suspension under proceedings dt. 28-11-1989 and has required him to submit explanation within 15 days from the date of receipt of the charge sheet. The petitioner requested for supply of material records and documents mentioned and relied upon for the issue of the charge sheet so as to enable him to submit his explanation by his application dated 10-1-1990. The Respondent has asked him to refer to the copies of documents at the time of commencement of the enquiry proceedings. Later on an Enquiry Officer was appointed under proceeding dt. 17-2-1990. However, the Respondent or the Enquiry Officer have chosen not to supply the documents called for by the petitioner and have proceeded in the matter in their own way. The petitioner requested for intervention of the Asst. Labour Commissioner(C) Vijayawada for supply of the material papers, and the management has furnished about twenty nine documents sought to be relied upon in the domestic enquiry only on 15-3-1991 and the petitioner sought for grant of 30 days time to enable to submit his explanation but the Management has sent a telegram by the Enquiry Officer that the request made in his representation dated 18-3-1991 was not considered and he should attend the enquiry on 27-3-1991 without fail, also the matter would be proceeded ex parte. In fact till 11-3-1991 the Enquiry proceedings were held at the Divisional Office, Ongole and even the venue of enquiry was shifted from Ongole to the Zonal office, Hyderabad fixing the date of enquiry as 27-3-1991 without any prior intimation to the workman. The petitioner apart from not

allowing to furnish an explanation before the domestic enquiry was not even granted the expenses to enable him to attend the enquiry at Hyderabad to which place the venue was shifted by the Management itself. The enquiry was adjourned to 9-4-1991 and even on this occasion also, the workman was not sanctioned any amount to defray the expenses of travel from Guntur to Hyderabad. Ultimately the workman was set ex parte on 9-4-1991 and the proceedings were concluded on the same day after examining Sri M. Gowri Shankar, M. W1 as the witness for the management and after making Exs. M1 to M26. Later on he workman was furnished with a report of the enquiry officer on 18-6-1991 wherein a punishment of dismissal from service was proposed to be imposed. The workman has sent his representation dt. 27-6-1991 and has attended the hearing on 28-6-1991 before the Disciplinary Authority Hyderabad and the said D.A. has imposed the punishment of dismissal from service by proceeding dt. 29-6-1991 with immediate effect. The workman is now seeking for the justice before this Hon'ble Tribunal and filling this claim statement for setting aside the order of dismissal from service dt. 29-6-1991 passed by the D.G.M. of the Respondent being illegal, unjustified and contrary to Rules and Regulations and principles of natural justice and equity on the following brief points :

- (1) Non-supply of material papers to the workman for enabling him to submit his explanation.
- (2) Ex parte enquiry, explanation of the workman dispensed with unjust, end illegal.
- (3) Denial of opportunity for proper defence for the workman.
- (4) Venue of Enquiry shifted from Ongole to Hyderabad without any intimation (advance intimation) to the workman contrary to the Rules and Regulations and principles of natural justice.
- (5) Enquiry is vitiated for the reasons of non-examination of the material witness, viz., U. Koteswara Rao and M. Sreenivas Rao, the defence complainants (Account Holders).
- (6) The Enquiry Officer has erred in ignoring the fact that the workmen is not the beneficiary of the transactions.
- (7) The Debit slips evidence the payment received by the Account holders.
- (8) The Enquiry vitiated since the persons concerned were not charged and the enquiry conducted on an erroneous belief that the workman is responsible;
- (9) No report or complaint filed of the account holders or the Manager or any of the staff members against the workman.
- (10) The Branch Manager, crucial witness not examined.
- (11) The observations of M.W1 without any basis.
- (12) The observations of the Enquiry Officer are without any evidence which stand to the test of Law and common sense.

- (13) The Enquiry report is not legal and valid as the enquiry officer has not accorded opportunity for defence statement and arguments.
- (14) Punishment by the Disciplinary authority on the basis of the exparte enquiry is vitiated.
- (15) The Disciplinary authority has not accorded the opportunity for the workman to place the loan-cum-sanction letters before him for appreciation.
- (16) The Loans were repaid-no loss to the Bank.
- (17) Categorizing the misconduct as grave is incorrect.
- (18) The punishment excessive-not proportionate with the irregularity.
- (19) Past record of the workman ignored.
- (20) Disciplinary authority not vested with the Authority to impose punishment.
- (21) Appellate Authority acted mechanically.

The petitioner-workman therefore prays that the Hon'ble Tribunal may be pleased to set aside the punishment of dismissal from service, communicated by the Deputy General Manager, Zonal Office, Syndicate Bank, Hyderabad in proceedings dt. 29-6-1991, grant back wages with all consequential benefits of service, including seniority, promotion etc. and other reliefs as deemed just and proper.

3. The brief facts of the counter filed by the Respondent-Bank read as follows:—The petitioner was issued a charge sheet dt. 21-11-1989 and the charge sheet may be read as part of this counter. As the irregularities are serious and amount to major misconduct under Clause 19.5(j) of the First Bipartite Settlement dt. 19-10-1966 a domestic enquiry was conducted after duly affording opportunities to the petitioner to submit his explanation and to defend his case in the enquiry. The charges levelled against the petitioner are proved in the enquiry. There are no merits in the petition hence is liable to be dismissed. In the charge sheet the petitioner was sanctioned 15 days time to submit his explanation and on his request one month's more time was granted. Being not satisfied with the letter dt. 13-3-1990 the Disciplinary Authority ordered for a domestic enquiry. Though petitioner was absenting in the enquiry the Enquiry Officer arranged to send copies of documents upon which the Respondent wanted to rely in the enquiry to the petitioner. Infact the Enquiry Officer must have proceeded with exparte proceedings on 11-3-1991 but with a view to let the petitioner has one more opportunity to participate in the Enquiry, fixed the date of hearing on 27-3-1991 and this time the Enquiry was fixed to be conducted at the Zonal Office of the bank at Hyderabad since the wilful absence of the petitioner caused avoidable expenditure and inconvenience to the officials of the Bank. By the fact that after receipt of copies of Enquiry proceedings, the petitioner requested to reopen the enquiry conducted at Hyderabad it can be easily understood that non-supply of documents or non-payment of expenses are not real grounds for his inability to participate in the enquiry but the petitioner who was

under suspension and getting his suspension allowances regularly intended to absent during the proceedings to maximum possible extent. The charge against the petitioner is not of sanction of loans but of raising fictitious debits to the loan accounts already in existence. The averment that at the stage of enquiry also he was not supplied all the papers is not correct. Without making any attempt to participate in the enquiry petitioner cannot say that certain documents were not furnished to him. Really if he was interested to defend himself, he might have participated in the enquiry and cross examined the management witnesses and then might have demanded whatever document he required. Therefore his demand after conclusion of the disciplinary proceedings, for production of documents i.e. Loan-cum-sanction letter of Sri U. Koteswara Rao and M. Srinivasa Rao is only an afterthought. As stated in para 3 of the counter, non-payment of expenses to travel to Hyderabad is not a real ground for his not attending enquiry conducted at Hyderabad. The petitioner is well aware of the Rule in the Bank that any employee whether under suspension or otherwise including his defence representative are eligible for T.A. and D.A. for attending enquiry. Infact the enquiry officer vide his notice dt. 13-3-1991 had intimated the petitioner that the enquiry will be held on 27-3-1991. The said notice was received by the workman. It is submitted that the proceedings of the enquiry are just and fair, conducted as per the rules and as per procedure laid down in the bipartite settlement and also in consonance with the principles of natural justice. Therefore as stated in para No. 1 of this counter non-payment of T.A. and D.A. is not real ground for his inability to participate in the enquiry conducted at Hyderabad and this averment by the petitioner is only an afterthought. The Respondent submits that non-examination of account holders will not vitiate the enquiry. The Respondent felt it not necessary to examine the account holders for the reason that the Investigating Officer had taken statement of account holders at the time of Investigation and same officer was examined before the Enquiry Officer. The Respondent submits that the petitioner is the beneficiary but not the Manager or account holder. The petitioner himself authorised the debits in the loan accounts of the borrowers and thereafter he made credit entries in the loan accounts without mentioning dates against the entries and did not record such entries in the Day Book and he falsified the figures in OG-167. It is true that there is no possibility whatsoever for any person to impersonate the two accounts holders. The Bank has got his own internal system to investigate into irregularities reported to and for the purpose of such investigation the sources of complaint will not be disclosed for the reason that there will be possibility of tampering of records. The Respondent submits that at this material time there were no sanctions of loan as per the circular dt. 10-3-1987 and therefore the management has nothing to do with the transaction of raising fictitious debits by the petitioner to already existing loan accounts and he need not be a witness as claimed by the petitioner. It is submitted that as the Manager did not sanction any fresh loans, the question of examining him in the enquiry has not necessitated. The observations of the Investigating Officer are based on the documentary evidence and as there was documentary evidence to prove the irre-

gularities committed by the petitioner, no body was examined on behalf of the Respondent Bank, except the Investigation Officer as M.W.1. It is true that the Branch was functioning with shortage of staff. The petitioner was incharge of the Loan Section at the relevant time and knowingly committed the irregularities. The observation of the Enquiry Officer are based on the evidence before him in the enquiry. The Disciplinary authority had considered also the statement of the petitioner given at the time of personal hearing. The Respondent submits that it is true that the loan amounts were paid back by the petitioner and that there is no loss to the Respondent Bank in the said transaction. But the fact remains that the petitioner has enjoyed the amounts by misappropriating temporarily. The punishment is proportionate to the gravity of the misconduct committed by the petitioner. The Respondent further submits that considering the past conduct/record is not mandatory in all cases particularly in cases where employer loses confidence in the employee. As the petitioner has committed grave misconduct and is detrimental to the business activities of the Bank, and the petitioner's integrity is in doubt and by considering the nature of charges levelled against the petitioner the Disciplinary Authority had no option, except to impose the punishment of dismissal against the petitioner. It is also not correct that the Disciplinary Authority has no power to impose punishment of dismissal from service. The Respondent submits that the Appellate Authority has considered all the aspects of the case before confirming the punishment awarded by the Disciplinary Authority. The punishment awarded to the petitioner is sustainable, justified, legal proportionate in accordance with the law and principles of natural justice. The charges levelled against the petitioner are proved beyond doubt and the Respondent Bank is justified in dismissing the petitioner from service and therefore the claim of the petitioner is devoid of merits. The Respondent prays that the Hon'ble Court may be pleased to uphold the action of the Respondent in dismissing the petitioner from services and dismiss the claim of the petitioner.

4. The point for adjudication is whether the action of the Respondent in dismissing Sri R. Baba Prasad, Special Assistant, Syndicate Bank Ongole Branch w.e.f. 29-6-91 is justified or not?

5. Before deciding the merits of the case, this case has come up for validity of the domestic enquiry as a preliminary issue. No oral evidence have been adduced by either parties but Exs. W1 to W6 were marked on behalf of the Petitioner and Exs. M1 to M26 were marked on behalf of the Respondent. On 9-5-1994 this Tribunal passed the Order holding that the domestic enquiry conducted by the Respondent Bank is held valid and proper.

6. The facts of the case are that the Petitioner workman was appointed on 8-4-1969 as a Clerk and was promoted to the post of Special Assistant. While he was working as such at Ongole Branch, he was issued with a charge sheet dt. 28-11-1989 alleging that he had done some acts prejudicial to the interest of the Bank vide Clause 19.5(i) of the Bipartite Settlement and thus committed misconduct. The charges in brief are that some irregularities were committed in respect of grant of loans to M/s. U. Koteswar Rao (L.D. A/c No. 478/88 and to M. Srinivasa Rao (L.D.

A/c. No. 357/88 who is a Staff member of the same Branch. The allegation is that the petitioner authorised the loans over and above the permissible limits and has not maintained proper accounts. The petitioner was asked to submit his explanation. The petitioner asked for the documents by his letter dt. 14-12-1989 and 10-1-1990 to enable him to submit his explanation to the chargesheet. The petitioner workman submits that he was not furnished with the documents requested and was told to see the documents at the time of enquiry, by letter of the Respondent dt. 10-2-1990 stating so the Respondent appointed and Enquiry Officer by letter dt. 17-2-1990. Again the Petitioner-workman asked for his documents by letter dt. 13-3-1990 when he was not furnished with the documents he approached the Assistant Labour Commissioner (C) Vijayawada for his intervention to see that the documents requested are furnished to the Petitioner-workman. Thereafter he was furnished with some documents and he prayed for some time to submit his explanation and the said request was refused by the Enquiry Officer by his letter dt. 18-3-1991 and the Petitioner workman was asked to attend the enquiry. The place of enquiry was shifted from Ongole to Zonal Office, Hyderabad and the Petitioner workman did not participate in the enquiry on the grounds that he was not furnished all the documents asked by him and that the place of enquiry was shifted to Zonal Office at Hyderabad and that he was not paid any T.A. and D.A. and that he was not informed of the date of enquiry well in advance. The case of the Respondent Bank is that the petitioner workman did not participate in the enquiry even after giving sufficient opportunity and therefore an exparte enquiry was conducted.

7. In the exparte enquiry, Sri M. Gowri Shanker was examined as M.W. 1 on behalf of the Respondent Bank and through him the documents were marked. The allegation against the Petitioner workman is that he committed certain irregularities in respect of grant of loans to two persons namely Sri U. Koteswar Rao and M. Srinivas Rao. The case as made out by M.W. 1 is that the loan granted to these two said persons was over and above the limits prescribed and that U. Koteswar Rao had Rs. 4,444.00 in his deposit account No. 5421 and that as per the Rules he was entitled for a loan of Rs. 3,333.00 only from his loan account No. 478/88 and that the petitioner workman is actively involved in granting higher amount as loan and to see that the loan sanctioned is within the limit, he resorted to temporary misappropriation and forgery, though the amount given as loan was fully paid up in the meantime. With regard to the case of Mr. M. Srinivas Rao, it is stated by M.W. 1 that he was given loan amount was not received by him and that the over and above the limit and that in fact the loan petitioner has received the loan amounts with the help of the vouchers given by Mr. M. Srinivasa Rao to the petitioner-workman. It is stated that the petitioner workman was in need of money and he approached his colleague Mr. Srinivas Rao and the said person unable to bear the pressure from the petitioner signed certain blank vouchers and that the petitioner withdrew amount from his loan account and that the said Srinivas Rao has no connection with the withdrawals made by the petitioner work-

man and that the said Srinivas Rao has no intention of withdrawing the amount. The witness M. W1 obtained statements of these two persons namely M/s. U. Koteswara Rao and M. Srinivas Rao during the course of his own investigation. The witness M. W1 relied on these statements to support his version. These two persons were not examined as witnesses on behalf of the Respondent-Management nor their statements were subjected to any cross examination. These are the statements obtained by M. W1 behind the back of the Petitioner-Workman. It is surprising as to why these two material witnesses were not examined before the Enquiry Officer. It is also on record that one of these two account holders is a staff member. Atleast he is not examined in the enquiry. Further the petitioner has also filed certain documents and one such documents is legal notice sent by one of the accountholders wherein the said accountholders disclaims any of these allegations and further it is stated in the said notice that his signature was obtained by M. W1 and that what is tried to be made out by M. W1 is not correct. It is also on record in the counterfiled by the Respondent Bank that the said account holder Mr. U. Koteswar Rao had also written a letter dt. 29-4-1991 earlier on the same lines. This creates any amount of doubt on the version of the management in support of the charges. Further a look at the vouchers filed by the Respondent-Bank also shows that the signatures are genuine. In any Bank the cashier pays the amount to the beneficiary only and in token of payment cashier obtains the signature on the back of the voucher. The signatures are there on the vouchers as required as per the Banking Rules. Even if it is assumed that the signatures are not that of the concerned accountholder, somebody must have signed at the time of receiving the payment from the cashier. Obviously the petitioner cannot sign being a Staff member who is well known in the Bank and who can be identified by anybody and the Cashier. If the concerned account holder had not come to the Bank, how the amount was paid and to whom. There is absolutely no evidence on this aspect in the enquiry. The Respondent has also not chosen to adduce any evidence in the Court. It is also on record that the Enquiry Officer has not given any finding on this charge pertaining to the account of Mr. U. Koteswar Rao. He just skipped over that and except narrating the statement nothing has been said by him. Surprisingly the disciplinary authority accepts the finding which is not there. All this shows that there is absolutely no application of mind on the part of the Authority who passed the removal order. Even otherwise, the evidence given by M.W1 cannot substantiate the charge alleged against the petitioner. Coming to the next part of the charge pertaining to Mr. Srinivas Rao, it is an admitted case of the Respondent that the said account holder had duly signed the vouchers and handed over them to the Petitioner due to the pressure exercised by him and that the petitioner managed to get the loan and used it. Here again the record shows that the vouchers bear the signature of the account holder, on their back side evidencing the payment of cash to him. Mr. Srinivas Rao is a Staff member of the same Branch and it goes without saying that nobody can take the amount except him. There is absolutely no evidence in the statement of M.W1 on this aspect of the matter.

M.W1 has simply presumed that since Mr. Srinivas Rao has said that he signed on the vouchers due to the pressure of the petitioner, the petitioner would have taken the amount. Therefore the evidence of M. W1 has not proved the charge alleged against the petitioner. It is also not known how many body can pressurise Mr. Srinivasa Rao and how he can sign the vouchers and leave the matter to the petitioner. There is no proof of this except the self serving statement of Sri Srinivas Rao. In view of the documentary evidence available, it is difficult to believe the version of M.W1. The Banking system has got some rules and when payment has to be made on taking the signature of a person, once the signature is there as required in the rules, it can be presumed that the payment is made to the concerned person. It is also not understood how Mr. Srinivas Rao kept quite when amount was taken by somebody else. There is any amount of doubt in the version of M.W1. As already stated that material witness are not examined. Further if any loan is to be granted, the concerned Clerk will prepare the voucher and the same will be sanctioned by the Branch Manager and then the same would be passed on to the Cashier for payment. All these persons cannot just do all this without there being the customer. If they do it they are also equally guilty. The petitioner is admittedly not the competent authority to sanction the loan. He is only a special Assistant in the category of Award Staff. The findings of the Enquiry Officer in this regard are not correct and are accordingly set aside. It is also the case of the Petitioner that whenever loan is granted the Customer has to fill up an application like the one marked as Ex. W4, and then only the loan will be sanctioned if the same is as per Rules. The petitioner has been asking for these loan sanction applications right from the date he was issued with the charge sheets. He also prayed for the intervention of the Assistant Labour Commissioner. He also filed an I.A. in this Court for summoning those documents. Surprisingly these documents which are basic for granting loan to a Customer are not produced in the Court. The stand taken by the Respondent that those documents are not available as no such documents are obtained is unbelievable. Further the stand taken by them at the initial stage is not this. Then it was contended for the Respondent that they need not be furnished to the petitioner as they were not being relied upon by the Respondent.

8. From the foregoing it is clear that the charges against the petitioner are not proved. The findings of the Enquiry Officer are not based on the material available. It is also contended for the petitioner that the dismissal order is liable to be set aside on the ground that the Respondent has failed to comply with the Bipartite Settlement. It is provided in the said Clause that it is mandatory on the part of the Disciplinary Authority to consider the past record of

the employee before imposing any punishment. In this regard the Petitioner relied upon SEETHALAKSHMI MILLS LTD. v. LABOUR COURT (1980 Vol. 56) IFJ page 70 wherein it is held that the dismissal order is liable to be set aside for non-compliance of the Standing Order, which provided that the past record of the employee must be looked into before passing an order of punishment.

“Undoubtedly, the dismissal orders which were impugned before the first Respondent do not contain any information that the management had taken into consideration the previous record of the workers before passing the orders of dismissal. During the pendency of the proceedings before the first respondent as well as in these writ petitions, it is not the stand of the petitioner that before awarding the punishment of dismissal to the two workers their previous record was taken into consideration. In such circumstances, there is a clear violation of the standing orders which have statutory force. The standing orders have been framed in accordance with the Industrial Employment (Standing Orders) Act, 1946 and therefore it follows that the management as well as the workers will be bound by the provisions contained in the standing orders. Courts have repeatedly held that any act done or order passed in violation of the standing orders cannot be legally sustained. I may only refer to a few cases in this behalf. A Bench of this Court has held in MAHALAKSHMI TEXTILE MILLS v. LABOUR COURT (1963 LLJ page 54 : AIR 1964 Mad. 51) that where the Standing Order framed in respect of an industry specifically provides that in awarding punishment for misconduct of a workman “the management shall take into account the gravity of the misconduct, the previous record, if any, of the workman and other extenuating or aggravating circumstances that may exist”, having regard to the mandatory nature of the Standing Order, there is no option left to the management to neglect these relevant factors and, when these factors have not been taken into consideration by the management while passing an order of dismissal of a workman, such order cannot be sustained. To the same effect are the decisions in P. Orr. and Sons (P) Ltd. v. Labour Court (1974) 1 LLJ 517 BOROSIL GLASS WORKS LTD. v. M.G. CHITALE (1974 II LLJ page 184 and B. SUBBAIAH v. ANDHRA HANDLOOM WEAVERS CO-OP. SOCIETY LTD. 1978 52 FJR 395. In WORKMEN OF B & C MILLS v. B and C MILLS (1970) 38 FJR 353 (SC) it has been held that Standing Orders certified under the Industrial Employment (Standing Order) Act must be treated as having a statutory force and binding upon the employer and the employee as statutory terms and conditions of service.”

To the same extent is the judgement of our High Court reported in ANDHRA CEMENT COMPANY LTD., SECUNDERABAD v. MOHD. ILIAS and ANOTHER (1988) (I) ALT page 65 it is held as follows :

“Under Rule 20(3) it is incumbent on the employer to take into account the gravity of the misconduct, the previous record if any, of the employee and any other extenuating or aggravating circumstance that may exist. This provision is not a mere procedural requirement, if vests a valuable right in every employee governed by the Act, a statutory condition of service to have his previous record of service considered by the employer while deciding to award punishment for any proved misconduct.

In this case, as there has been non-compliance of mandatory statutory provisions by the employer before awarding punishment, rendering the order of discharge illegal, the second respondent rightly set aside the order of discharge passed by the petitioner.”

In this case Rule 20(3) of the Shops and Establishment Rules provides that the employer shall take the past conduct of an employee into consideration before passing the order of punishment. It is held by a Bench of our High Court that the said rule is mandatory and the non-compliance of the same will result in setting aside the dismissal order. To the same extent is another judgement of a Division Bench Reported in B. SUBBAIAH v. ANDHRA HANDLOOM WEAVERS COOP. SOCIETY LTD. (1978 (I) LLJ page 37) This judgement considered various judgements on this issue and laid down the law.

“Held, the provisions of sub-rule (3) of Rule 20 of the A. P. Shops and Establishments Rules is not a mere statutory provision but is a statutory condition of service by which the employer is bound. When a co-operative society punishes its employee after holding an enquiry it has got to take into account not only the gravity of the misconduct but his previous service record as well. It is also required to taken into account the extenuating or aggravating circumstances, if any. In other words, having decided that the delinquent employee had committed an act of misconduct, the quantum of punishment to be awarded to him must bear the reflection of his previous service records and must also be decided into the list of the extenuating or aggravating circumstances that might be existing. This is the statutory right that Rule 20(3) gives the employee. This is not a procedural requirement but a right referred upon the employee. If this right is denied, the Labour Court is bound to come to the conclusion that the dismissal is unjustified.”

In this case also admittedly the parties are bound by the Bipartite Settlement. Even the disciplinary action is taken only basing on it. In these circumstances it goes without saying that the said Clause is mandatory

and the employer is bound to comply with it. A perusal at the dismissal order will make it clear that there is non-compliance of the said Clause and therefore the dismissal order is liable to be set aside on this ground also. In this case the Petitioner has a total service of 22 years and the same is clear and unblemished. This is an important and the same should have been given due weight. For all the reasons stated above I am of the view that the dismissal order is liable to be set aside and accordingly the same is hereby set aside. The Respondent is directed to reinstate the Petitioner-workman into service with full back wages, continuity of service and all attendant benefits.

9. In the result, the action of the Management of Syndicate Bank, Zonal Office, Vijayawada (Now shifted to Hyderabad) in dismissing Sri R. Baba Prasad, Special Assistant, Syndicate Bank, Ongole Branch, w.e.f. 29-6-1991 is not justified. The petitioner-workman is entitled to be reinstated into service with full back wages, continuity of service and all other attendant benefits.

Award passed accordingly.

Typed to my dictation, given under my hand and the seal of this Tribunal, this the 20th day of May, 1994.

Y. VENKATACHALAM, Industrial Tribunal-I

Appendix of Evidence

Witnesses Examined on either side

NIL

Documents marked for the Petitioner-Workman (By consent)

- Ex. W1|28-11-89 Charge sheet-cum-suspension order issued to Sri R. Baba Prasad by the Asst. General Manager, Syndicate Bank (Disciplinary Authority).
- Ex. W2|8-5-91 Advocates letter addressed to Sri R. Baba Prasad under copy to Branch Manager, Syndicate Bank, Ongole.
- Ex. W3|8-9-89 Xerox copy of the complaint given by N. Srinivasa Rao.
- Ex. W4|Model Challan Form.
- Ex. W5|14-6-91 Letter to Sri R. Baba Prasad intimating the hearing Date.
- Ex. W6| Report of the Enquiry Officer.

Documents marked for the Respondent-Management (By consent)

- Ex. M1|28-12-89 Xerox copy of Ex. W1.
- Ex. M2|14-12-89 Letter given by R. Baba Prasad to the Assistant General Manager Zonal Office, Vijayawada.
- Ex. M3|10-1-90 Letter given by R. Baba Prasad to the Assistant General Manager Zonal Office, Vijayawada.
- Ex. M4|17-2-90 Xerox copy of appointment of E.O. Sri S. Manoharan.
- Ex. M5|13-3-90 Letter from R. Baby Prasad to the Asst. General Manager, Syndicate Bank.

- Ex. M6|22-8-90 Xerox copy of appointment order of Sri C. S. Rao as Enquiry Officer.
- Ex. M7|22-8-90 Authorisation Letter to Sri Jayaraman to act as management representative.
- Ex. M8|9-11-90 Enquiry Notice (Xerox copy).
- Ex. M9|19-12-90 Letter dt. 19-12-90 addressed by Dy. General Manager to ALC(C) Vijayawada (xerox copy).
- Ex. M10|19-2-91 Enquiry notice (xerox copy).
- Ex. M11| Xerox copy of enquiry proceedings along with documents enclosed to the proceedings
- Ex. M12|9-3-91 Representation submitted by the workmen to the Asstt. General Manager Zonal Office, Syndicate Bank (Xerox copy).
- Ex. M13|13-3-91 Xerox copy of enquiry notice.
- Ex. M14|18-3-91 Representation submitted by the petitioner (xerox copy)
- Ex. M15 Xerox copy of enquiry report.
- Ex. M16|14-6-91 Xerox copy of covering Letter under which Dy. General Manager forwarding the enquiry report and proposed punishment of dismissal and giving opportunity for hearing.
- Ex. M17|28-6-91 Xerox copy of written submission of the petitioner regarding proposing punishment.
- Ex. M18| Xerox copy of Minutes of hearing on proposed punishment.
- Ex. M19|20-6-91 Covering letter forwarding the dismissal Order.
- Ex. M20|28-6-91 Xerox copy of dismissal order
- Ex. M21|9-8-91 Appeal submitted by the petitioner to the Appellate Authority (xerox copy).
- Ex. M22| Xerox copy of written submissions regarding personal hearing on 10-9-91 regarding appeal.
- Ex. M23 Minutes of hearing of appeal dated 10-9-91 (xerox copy).
- Ex. M24 Covering letter sending the Appellate Authority order (xerox copy).
- Ex. M25|20-9-91 Order of the Appellate Authority (xerox copy).
- Ex. M26|10-2-92 Written comments submitted by the respondent before the ALC (Central) Vijayawada (xerox copy).

नई दिल्ली, 23 जून, 1994

का. आ. 1595.—औद्योगिक विवाद अधिनियम 1947 (1917 का 14) की धारा 17 के अनुवर्ण में, केन्द्रीय सरकार बैंक आफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निदिष्ट

औद्योगिक विवाद में औद्योगिक अधिकरण, सुरत के पंचपट को प्रकाशित करती है जो केन्द्रीय सरकार को 22-6-94 को प्राप्त हुआ था।

[संख्या एल-12012/189/91-आई आर (बी.-2)]

वी. के. शर्मा, डेस्क अधिकारी

New Delhi, the 23rd June, 1994

S.O. 1595.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Surat as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bank of India and their workmen, which was received by the Central Government on the 22-6-94.

[No. L-12012/189/91-IR(B-II)]

V. K. SHARMA, Desk Officer

ANNEXURE

BEFORE INDUSTRIAL TRIBUNAL SURAT
GUJARAT STATE : INDIA.

MEMBER MR. E. B. DUMASIA.

Reference No. (ITC) 1 of 1991

The Bank of India,
Through Regional Manager,
Regional Office,
Shri Suriti Modli
Vanik Samasta Panch's Bldg
Limda Chowk,
Surat-395003.
Gujarat State—India.

Vs.

Shri. Bharatbhai Ukabhai Ahir,
At and Post : SATEM,
Taluka : Navsari
District : Bulsar.
Gujarat State,
India.

Reference U/s. 10(1) of the Industrial Disputes Act, 1947.

Parties represented by :—

Shri M. N. Chauhan, Officer for Bank

Shri A. N. Khatari
Union Activities,
The South Gujarat
Bank of Baroda,
Employee's Union,
Surat.

For Employee

AWARD

1. The Ministry of Labour, Government of India, New Delhi Vide order No. L-12012/189/91-IRB-II dated 21-10-1991 has made this reference U/s. 10 (1) of the Industrial Disputes Act 1947, (hereinafter called as ID Act), for the adjudication of the industrial dispute shown in schedule, which reads as under :

“Whether the action of the management of Bank of India, in terminating the services of Shri B. U. Ahir, Part-time Sweeper, is justified? If not, to what relief is the workman entitled?”

2. On service of notice of reference the parties appeared before this Tribunal.

3. The employee has filed the statement of claim at Ex. 5, and has contended that since 1-10-1988 he was working in Bank of India, Satam Branch, situated in Taluka : Navsari, District; Bulsar, Gujarat State, as Part-time Sweeper. Though he performed 330 days continuous service, yet his service has been abruptly terminated w.e.f. 18-11-1989 without following legal procedure laid down U/s. 25-F (a) (b) (c) of The I.D. Act, which action of the management is illegal, unfair, arbitrary, abinitio null and void. No heed is paid to his notice dated 8-8-1990 by management, as by reply dated 27-12-1990, his claim of reinstatement and back wages, is denied and refused. On failure of Asstt. Labour Commissioner (Central), Ahmedabad, for compromise during conciliation proceedings, the ultimate result is the making of present reference, by The Ministry of Labour, Govt. of India, New Delhi. The prayer of the employee is for passing of order, directing the management for his reinstatement w.e.f. the date of termination of his service and payment of back wages and costs.

4. The Management has filed the written statement at Ex. 8. The sum and substance of defence, is that due to shortage of sub-staff, the Manager was engaging, the concerned workman, as a Casual Labour, as and when required, on casual basis only. Thus the Bank had engaged the services of the workman as a Part-time sweeper/casual labour who had worked intermittently at Satam Branch from 1-10-1988 to Oct. 1989, on adhoc basis only and that too for total 75 days only. His so engagement was in accordance with Cl. 20.7(C) of Bipartite settlement dt. 19-10-66. The procedure for recruitment in Banking Industry, particularly for subordinate staff is explained, and it is contended that the recruitment is made, following the said procedure. It is averred that the post belonged to Scheduled Tribe Category and as per Rules and Regulations the post was accordingly filled up, following requisite procedure. Hence the services of Shri B. U. Ahir, even as a part-time Sweeper/casual labour was not required any more and hence he was not offered the said work thereafter. All averments of Shri B. U. Ahir Viz. that he performed 330 days continuous services as a part-time Sweeper that procedure U/s. 25-F₂ of I.D. Act was required to be followed and yet not followed, that action of terminating service is illegal unfair, arbitrary, abinitio null and void, his right of reinstatement with back wages etc., etc., are all denied in toto. It is prayed to dismiss the reference.

5. Shri B. U. Ahir has examined himself at Ex 18 and has produced papercutting at MK. 10/1

6. The management has examined Manager Shri S.G. Vaidya at Ex. 22 and has produced document

at MK 8|1 to 8|7, Annexure 'A' to 'G' MK 11|1, Annexure "G", MK 13|1 to 13|13.

7. Workman has submitted written argument at Ex. 24 and the rejoined written argument at Ex. 26. The Management has submitted the written arguments at Ex. 25.

8. Oral and documentary evidence on record is perused and written arguments are gone through.

9. The following issues arise for determination :—

- (1) Whether the workman Shri B. U. Ahir has completed 240 days continuously and uninterrupted. So as to claim the benefit of Sec. 25-F of the I.D. Act ?
- (2) If so, whether his services were terminated illegally by the Management ?
- (3) If so, what relief he is entitled to ?
- (4) What order ?

10. For reasons given below, the answers are as under :—

Issue No. 1—In the Negative.

Issue No. 2—In the Negative.

Issue No. 3—Nill.

Issue No. 4—As per final order

11. Reasons :

Issue No. 1, 2 and 3.

Shri B. U. Ahir, in his statement of claim Ex-5 at Para-4 has stated that he was Part-time Sweeper but he has not stated the number of hours—for which he worked, in his affidavit Ex. 18 in para one, he has given the working hours as three saying 9.30 A.M. to 12.30 Noon. The ratio, of case of Ram Lakhan Singh, Vs. The Presiding Officer, Labour Court, Chandigarh, in Civil Writ Petition No. 4200/82, reported in 1988 LAB. I.C. 867 and in L.P.A. 836/88 reported in 1989 LAB. I.C. 1650, is that while counting the period of continuous service, part-time service period, is not to be considered. The part-time workman is not covered by the I.D. Act and is not entitled to benefit U/s 25-F. The facts of the said case were that on 14-7-1980, the incumbent was employed as a part-time Mali for two hours a day at a remuneration of Rs. 73 per month. On 6-11-1980, the employment was modified to four hours a day at salary of Rs. 113.50 ps. per month. On 6-2-1981, he was given an ad-hoc and temporary appointment as Chowkidar for a period of 89 days and his services as Chowkidar were terminated w.e.f. 18-6-1981. His part-time service for two hours a day from 14-7-1980 to 5-11-1980 and for four hours a day from 6-11-1980 to 5-2-1981 was not considered while counting period of continuous service holding that part-time workman, is not covered by I.D. Act and he is not entitled to benefit U/s. 25-F. The case advanced by Shri B. U. Ahir is that he was a part-time sweeper for working three hours a day and that being so, as per above ratio for counting period of continuous service, his said part-time service period, all through, is not to be considered. He is, as per his own claim, part-time workman and hence as per above ratio he is not covered by I.D. Act and is not entitled to benefit of Sec. 25-F.

12. Above being the legal position it is not necessary to find out as to four how many days, continuously, Shri B. U. Ahir, has worked, in other words whether requisite period of 240 days, is over or not. Even then if my answer is necessary it is dealt with here under.

13. Shri B. U. Ahir in his affidavit Ex. 18 at para one has stated that since 1-10-1988 he was working every day and so worked upto 18-11-1989. At para two, he has claimed having continuously and uninterrupted served for 404 days, inclusive of Sundays and Public Holidays. No doubt in his statement of claim Ex. 5 at para 4 he has advanced the theory of 330 days.

14. The debit vouchers are produced at MK 13|1 to 13|13 for period 16-11-1988 to 9-12-1989 and the amount figures are also shown in production list Ex. 13. It is absolutely clear that the figure of remuneration every month is not constant as it is either 70 or 100 or 134 or 302. That means that the number of days worked every month are not same but at times, more and at times, less. Debit voucher MK 13|2 for month of Nov. 1988 reveal as the number of exact days worked and that is seven only. Suffice to say that in Nov. 88 he had worked for seven days only. The number of days vary from month to month and for the element of "continuous" or "uninterrupted" service it is difficult to find out exact days of each month and hence the exact figures can not be arrived at. In short the evidence on record does, not reveal continuously and uninterrupted working for 240 days.

15. Shri B. U. Ahir, in his evidence Ex. 18, in his cross examination, at Para-8 has admitted that was the post for ST Category, as advertised in News Paper MK 10|1, which was filled following requisit procedure from amongst ST candidates, he belong to General category and was not eligible at all and as candidate belonging to ST Category was selected and appointed following due procedure, no work was left out for him to do and hence he was not given any work. He has further, admitted in his cross that action of Bank in terminating his services is perfectly on tune with Bank's Rules and Regulations, and is legal one.

16. For above reasons workman Shri B. U. Ahir has not completed 240 days continuously so as to claim benefit of Sec. 25-F of I. D. Act and his services were legally terminated as such he is not entitled to any relief. The issue No. 1 is answered in negative, issue No. 2 is answered in negative and issue No. 3 is answered that he is not entitled to any relief.

17. Issue No. 4.

The reference fails, hence I pass following order :

ORDER

Reference is rejected with no order as to costs.

Surat.

Date : 18-5-1994.

E. B. DUMASIA, Member,
Industrial Tribunal,
Surat—Gujarat State.

